

Delegation of Powers and Appointment of Authorised Persons - Council Policy

Effective Date	Ordinary Meeting of Council - 21 September 2016
Policy Owner	Governance Information Support
Link to Corporate Plan	Strategic Theme 1: Effective and Inclusive Governance
Review Date	August 2020
Related Legislation	<ul style="list-style-type: none"> • <i>Local Government Act 2009</i> • <i>Local Government Regulation 2012</i> • <i>Acts Interpretation Act 1954</i> • <i>Local Government Acts</i> • <i>Western Downs Regional Council Local Laws</i>
Related Documents	SWP - Delegated Power and the Appointment of Statutory Authorised Persons and Administrative Authorised Officers WDRC Delegations Register (Council to CEO) WDRC Delegations Register (CEO to Employee/Contractor) WDRC Authorisations Register WDRC Administrative Authorisations Register

Policy Version	Approval Date	Adopted/Approved
1	16/10/2013	Ordinary Meeting of Council - 16 October 2013
2	05/08/2015	Ordinary Meeting of Council - 5 August 2015
3	21/09/2016	Ordinary Meeting of Council - 21 September 2016

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DELEGATION OF POWERS AND APPOINTMENT OF AUTHORISED PERSONS - COUNCIL POLICY

POLICY OBJECTIVES/PURPOSE:

The purpose of this policy is to ensure Council meets its legislative delegation and authorisation requirements under the *Local Government Act 2009* and *Local Government Regulation 2012* in the most effective and efficient way possible.

Council is committed to:

1. Providing an effective and efficient framework to issue, record, administer and exercise delegations, statutory authorisations and administrative authorisations;
2. Promoting effective internal control and sound corporate governance practices in relation to delegations, statutory authorisations and administrative authorisations;
3. Providing Council employees, committees and chairs of committees with the level of delegated power and authority necessary to discharge their responsibilities from a legal and sound corporate governance perspective;
4. Supporting good decision making, efficiency and effectiveness in Council's administrative processes and complete corporate records; and
5. Eliminating legal non-compliance issues impacting upon the legal validity/enforceability of Council decisions, or Council's ability to legally enforce or litigate breaches of Local Government Acts.

ORGANISATIONAL SCOPE:

This policy applies across Council and is applicable to the Mayor, Councillors, a Standing Committee, the Chairperson of a Standing Committee, the Chief Executive Officer and all Council employees and contractors.

It does not apply to members of a Council appointed Advisory Committee as no powers may be conferred to an Advisory Committee.

POLICY:

Delegation of Power by Council or the Chief Executive Officer

1. Pertinent powers in the "Local Government Act" are delegable by Council resolution to¹:
 - (i.) the Mayor; or
 - (ii.) the Chief Executive Officer; or
 - (iii.) a standing committee; or
 - (iv.) the chairperson of a standing committee; or
 - (v.) a Councillor, for the purpose of exercising a power as a shareholder in relation to a corporate entity.

However, Council must not delegate a power that an Act states must be exercised by resolution. ²

2. The Mayor may delegate the Mayor's powers to another Councillor of Council. However, the Mayor must not delegate the power to give directions to the Chief Executive Officer or senior executive employees³.
3. The Chief Executive Officer may delegate the Chief Executive Officer's powers to an appropriately qualified employee or contractor of Council. However, the Chief Executive Officer must not delegate:
 - (a) a power delegated by the local government, if the local government has directed the Chief Executive Officer not to further delegate the power; and
 - (b) a power to keep a register of interests.⁴

¹ *Local Government Act 2009* - section 257 Delegation of local government powers; section 258 Delegation of Mayor's powers; section 259 Delegation of Chief Executive Officer powers

² *Local Government Act 2009* - section 257(2)

³ *Local Government Act 2009* - section 258 Delegation of Mayor's powers

⁴ *Local Government Act 2009* - section 259 Delegation of Chief Executive Officer powers

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4. The Chief Executive Officer must establish a register of delegations that contains the particulars prescribed under a regulation. The Chief Executive Officer must record all delegations by the Council, Mayor or the Chief Executive Officer in the register of delegations. The public may inspect the register of delegations.⁵
5. While power delegated by the Chief Executive Officer pursuant to the provisions of the *Local Government Act 2009* can be exercised in favour of either an employee or contractor specified by name or the holder of a Specified Office by reference to the Specified Office concerned (section 27A *Acts Interpretation Act 1954*), the delegation of power is to be made to a Specified Office in terms of delegating the Chief Executive Officer's powers, i.e. delegations are to the position and not the person.
6. A power delegated is exercisable when the Specified Office to which the power has been delegated is occupied by a Council employee formally appointed to that Specified Office, for the period of time the employee is appointed to the Specified Office, i.e. a person officially relieving in a position with delegations automatically assumes those delegations.
7. Delegates or officers other than the Chief Executive Officer, cannot sub-delegate or on-delegate any power delegated. A delegate may appoint a person or group, such as a committee, to advise about the exercise of a delegation but the delegate remains responsible for making the decision (*Acts Interpretation Act 1954*).
8. Delegates have the responsibility of making decisions on behalf of the Council. That means that decisions may be subject to appeal or enquiry as to inappropriate administrative procedures. Delegates are therefore expected to exercise their responsibility in accordance with the provisions of the law as it would have applied to Council were it making the decision.
9. In making decisions, delegates should make themselves aware of any specific Council policies, decisions, local laws, statutory provisions, information etc. that may be relevant to the proposal. This is a key responsibility that forms an integral part of the delegation.
10. The delegation does not derogate from the power of Council to act in any matter itself. Accordingly, decisions that appear to the delegate to be of particular public interest, sensitivity, or special importance should be referred to more senior management or the Council for determination. The exercise of this judgement should be such that decisions should be referred if the delegate has any doubts about the interest in or significance of the proposal.
11. A delegated power may be exercised only in accordance with any conditions to which the delegation is subject.
12. Subject to any exemptions to delegations hereof,
 - where a power to decide or approve an application is delegated, the delegation includes the power to, where appropriate:
 - (i.) approve the application,
 - (ii.) approve the application, subject to reasonable and relevant conditions, or
 - (iii.) refuse the application.
 - where a power to do a thing is delegated, the delegation includes the power not to do it; and
 - where a power is to grant, issue or approve a thing, this includes where appropriate, the power to suspend or repeal it.
13. The power to contract is delegable pursuant to the delegation process subject to the exercise of the power being constrained by the provisions of the *Local Government Act 2009* and Council's Procurement Policy.

⁵ *Local Government Act 2009* - section 260 Local government delegations register

Exemption to delegations

1. A power that, in an Act or statutory instrument, is required to be exercised by resolution of Council, may not be delegated by Council. Such powers are expressly exempted from being delegated.

Limitations to the exercise of power

1. The Chief Executive Officer may sub-delegate the powers contained in the WDRC Delegations Registers, unless specified otherwise.
2. Where Council in its budget or by resolution allocates an amount for the expenditure of Council funds in relation to a particular matter, the delegate in exercising delegated power in relation to that matter, will only commit the Council to reasonably foreseeable expenditure up to the amount allocated subject to the provisions of Council's Purchasing Policy.
3. The delegate will not exercise any delegated power in relation to a matter which, to the delegate's knowledge adversely affects, or is likely to adversely affect, the Council's relations with the public at large.
4. The delegate will not exercise any delegated power in relation to a matter which has already been the subject of a resolution or other decision of the Council (including a policy decision relating to the matter).
5. The delegate will not exercise any delegated power in a manner, or which has the foreseeable affect, of being contrary to an adopted Council policy or procedure.
6. The delegate will comply with any conditions associated with delegations as specified in the delegation.
7. The delegate will only exercise a delegated power under this resolution in a manner which complies with the requirements of Council's Planning Scheme and any exercise of power which involves a departure from or variation of those requirements will only be undertaken by Council.
8. The delegate will not exercise any power which cannot lawfully be the subject of delegation by Council.
9. Where the delegate refuses a particular matter, or an appeal is made in respect of the delegate's decision, the delegate may provide the appropriate advices to Council.
10. Where enforcement action is taken such as the issue of a notice or an order requiring compliance, the details of such action may be reported to Council for information.
11. The delegate will only sign documents in accordance with the "Document Signing - Organisational Policy", approved by the Executive.

Power to Appoint a Statutory Authorised Person

1. Where legislation requires that a Statutory Authorised Person is to be appointed by Council, Council's power to appoint a Statutory Authorised Person pursuant to the Local Government Acts is delegable by Council resolution to the Chief Executive Officer pursuant to the delegation process.
2. The Chief Executive Officer or a Specified Officer to whom the Chief Executive Officer has delegated the power, exercises a discretion in their own right in the appointment of Statutory Authorised Persons.
3. The Local Government Acts utilises this delegation process for the purposes of appointing Statutory Authorised Officers to exercise the defined rights of enforcement, acting reasonably in reliance on relevant information, provided in the relevant legislation. The power to appoint a Statutory Authorised

Person is delegable but the appointee is unable to on-delegate his/her appointment, i.e. a person officially relieving in a position does not automatically assume the authorisations of the person who normally holds that position.

4. An employee or contractor appointed as a Statutory Authorised Person does not exercise a discretion in their own right, but rather exercises the statutory defined rights of enforcement outlined in the relevant legislation.

Administrative Authorisation

1. Under the provisions of the *Local Government Act 2009*, the Chief Executive Officer has a number of roles including establishing and implementing goals and practices in accordance with the policies and priorities of Council and the day-to-day management of Western Downs Regional Council's affairs. Administrative authorisations are an authorisation from the Chief Executive Officer to a Council Officer, pursuant to Section 13 of the *Local Government Act 2009*.

(For example, the signing of correspondence is not a delegated power nor is it the exercise of a Statutory Authorisation. Authority to sign correspondence emanates from Section 13 of the *Local Government Act 2009* and is an Administrative Authorisation from the Chief Executive Officer, i.e. carrying out such a function equates to the performance of an administrative act which will not usually impact upon legal rights.)

2. The signing of correspondence by a Council Officer must not involve a delegation inappropriately, e.g. a person signing a letter must not purport to bind the Council to a contract unless that person occupies the Office that has the appropriate delegated power to do so.
3. Where Council has resolved to make, vary or discharge a contract, an officer occupying an office authorised by the Chief Executive Officer pursuant to Section 13 of the *Local Government Act 2009* may execute requisitions or any other transactional or administrative requirement or documentation to make, vary or discharge the contract consistent with the resolution of Council.
4. An Officer executing a purchase or requisition order who does not occupy the Specified Office holding the delegated power to do so is acting in his own right as an Administrative Authorised Officer ultimately responsible to the Specified Office that does have the delegated power to contract in relation to the matter.

REVIEW TRIGGER:

- Change in legislation affecting this policy