



## 1.20 DELEGATIONS POLICY

<b>Council Resolution:</b>	2022/06/21/009
<b>Date to take effect:</b>	22 June 2022
<b>Legislative reference:</b>	<i>Local Government Act 2019, Local Government (General) Regulations 2021</i>
<b>Last Review Date:</b>	20/10/2020

### 1. PURPOSE

The purpose of this policy is to establish a framework for delegating (and further delegating) powers, functions and duties vested in the Council and its Officers.

This policy is in accordance with Section 40 and Section 168 of the *Local Government Act 2019 (the Act)*, which makes provision for the delegation of power and functions from the Council and from the Chief Executive Officer (CEO).

### 2. SCOPE

This policy applies to Council, Council Committees and/or any other authority, subsidiary, body or board established under *the Act*, the CEO and any other council staff having been delegated or sub-delegated a power, function or duty vested in the council.

### 3. POLICY STATEMENT

#### 3.1 Legislative Framework

3.1.1 Section 40 of *the Act* provides that a Council may delegate powers and functions to:

- a) the Chief Executive Officer; or
- b) a council committee; or
- c) a local board; or
- d) a local government subsidiary; or
- e) a local authority

3.1.2 However, under section 40(3) and 40(4) of *the Act*

- a) the power to impose rates cannot be delegated; and
- b) if power to incur financial liabilities is delegated the council must fix reasonable limits on the delegate's authority; and
- c) if power to enter into a contract is delegated – the contract must be below the threshold value; and
- d) a delegation cannot duplicate or derogate from the CEO's functions (including delegated functions)
- e) power to make a decision that requires a council resolution cannot be delegated.

#### 3.2 Delegation to the CEO

3.2.1 The following can be delegated in accordance with Section 168:

- a) the power to enter into a transaction on conditions that are not arm's length conditions if the transaction will provide a community benefit;

b) the power to waive a fee (wholly or partly) under section 289(4) if the waiver will provide community benefit

*(A decision to waive a fee for service (wholly or partly) under section 289(4) requires a council resolution)*

### **3.3 Protocols for the use of Delegated Authority**

3.3.1 Any exercise of delegated authority is subject to compliance with

- a) any relevant provisions of the *Local Government Act 2019* and *Regulations*
- b) any other legislative requirements
- c) any applicable Council policy
- d) the relevant provisions of any Council By-law

3.3.2 A delegated authority will not be exercised where a conflict of interest exists, or a perceived conflict of interest exist. Council may revoke or vary delegation at any time if it is within Council's powers or the CEO may revoke or vary any sub delegation at any time.

3.3.3 A delegation under Section 40 must be made in accordance with the regulations or any legislative requirements.

## **4. DELEGATIONS**

### **4.1 Delegations and Sub-delegations**

4.1.1 are to be worded so that they are exercisable by a body or the holder of a position, not a specific individual

4.1.2 cannot go beyond what could have been done by the body or person providing the delegation; and

4.1.3 must be in writing and may be expressed to be subject to conditions or limitations which must be adhered to.

4.1.4 The Council or person delegating a function to another body or person may, at any time

- a) Exercise the delegated functions; or
- b) In writing, revoke, or vary, the delegation

### **4.2 Delegation by Shire President**

4.2.1 The Shire President has the authority to act within Section 59 in addition to Section 40 of the *Local Government Act 2019*.

4.2.2 The Shire President may act in relation to any Council policy that provides the Principal Member powers and authorities to act within the limits of the Policy.

4.2.3 In addition, the President may delegate that the Vice President carry out functions of the Principal Member in their absence from official duties due to illness or other reason.

4.2.4 If the principal member is absent from official duties and there is no deputy principal member or the deputy is not available to act in the principal member's position, the council may, by resolution, appoint another member of the council to act in the principal member's position for a specified period or until the principal member resumes official duties.

### **4.3 Delegation by CEO**

4.3.1 The CEO may delegate the CEO's powers and functions under this *ACT* or another Act.

4.3.2 A delegation may be made to an individual or a committee

4.3.3 Despite subsection 4.3.1 and 4.3.2, the power to authorise a staff member in relation to a conflict of interest under section 179(6) cannot be delegated.

4.3.4 Despite subsection 4.3.2 the CEO must not delegate a power or function to the following:

- An audit committee
- A council committee
- A local authority
- A local government subsidiary

#### **4.4 Authorised Persons**

4.4.1 In accordance with Section 183 of the *Local Government ACT 2019*, Council will appoint authorised persons as determined by Council

4.4.2 An authorised person, is subject to any limitation and conditions of appointment, authorised to exercise the powers in accordance to Section 187, 188 and 189 of the *ACT* and Council By-Laws.

#### **4.5 Execution of documents pursuant to Delegated Authority**

4.5.1 The person who enters into a deed, contract, agreement or similar document pursuant to a delegated authority must do so in accordance with all policies, procedures, conditions and limitations including those set out in the Register of Delegations and Sub-Delegations and Procedure – Common Seal and Delegated Authority Execution and any other condition or limitation imposed on the delegate.

#### **4.6 Items not to be Delegated**

Despite section 40(1), the following items cannot be delegated by the Council:

- (a) make a levy or fix rates, valuations, charges, fees, fares, dues or rents;
- (b) the power to incur financial liabilities;
- (c) a delegation cannot duplicate or derogate from the CEO's functions (including delegated functions)
- (d) the appointment of a Chief Executive Officer;
- (f) the appointment of an Auditor and determination of the Auditor's fee;
- (g) the appointment of a Deputy President;
- (h) The power to enter into a contract unless below the threshold value
- (i) a delegate cannot enter into a transaction on conditions that are not arm's length or make a decision that requires a council resolution (subject to Part 4.2 Section 40 (4) (5) of the *Act*).

## **5. RESPONSIBILITY AND APPLICATION**

5.1 The Chief Executive Officer must maintain a Register of Delegations and Sub-delegations of all Council and CEO delegations and sub-delegations made.

5.2 This policy should be evaluated on the basis that the extent of delegation and sub-delegation are improving the efficiency of the administrative processes by the devolution of the authority and accountability to appropriate staff and/or other bodies to enable proper discharge of their responsibilities and to ensure that internal controls are effective.

5.3 The Policy is to be reviewed every four (4) years within the term of the Council and maybe reviewed at other times at the discretion of the CEO.

**DOCUMENT HISTORY**  
**DELEGATIONS POLICY**

<b>Date Adopted:</b>	10/02/2016	16/02/2016/008
<b>Amended:</b>	20/10/2020	20/10/2020/008
<b>Amended:</b>	21/06/2022 – Updated	2022/06/21/009
<b>Amended:</b>		