



POLICY

APPLICATION OF DELEGATIONS

Approved by: *Council. Date: 26 June 2012*

Subsequent Amendments:

Next Review Date: **30 June 2013**

Responsible Officer

Position: *Senior Governance Consultant*

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ACC2011/81114

1. Introduction

- 1.1 In accordance with the Local Government Act 1999, the Council is required to keep a separate record of the powers and functions delegated to the Chief Executive Officer and/or Corporation Staff.
- 1.2 This policy will provide a framework in which Council staff can exercise their delegated powers and functions in accordance with the directives from Council, the instruments of delegation and prescribed legislative requirements.
- 1.3 The instruments of delegations are to be read in conjunction with any Adelaide City Council policy documentation. If any inconsistencies exist between policy documentation and the instruments of delegations, the instrument of delegations will prevail.
- 1.4 The Council may delegate powers and / or functions under Section 44 of the Local Government Act, 1999 via a Council resolution for Corporation Officers to exercise those powers or functions vested or conferred under the:
 - City of Adelaide Act 1998
 - Dog & Cat Management Act 1995
 - Expiation of Offences Act 1996
 - Freedom of Information Act 1991
 - Land & Business (Sale and Conveyancing) Act 1994
 - Liquor Licensing Act 1997
 - Local Government Act 1999
 - Occupational Health, Safety and Welfare Act 1986
 - Road Traffic Act 1961 (SA), Road Traffic (Miscellaneous) Regulations 1999 and Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 1999
- 1.5 The Council may delegate powers and / or functions via a specific and individual Council resolution for Corporation Officers to exercise those powers or functions vested or conferred under the:
 - Public and Environmental Health Act 1987;
 - Supported Residential Facilities Act 1992;
 - Food Act 2001; and
 - Development Act 1993.

2. Policy Objectives

- 2.1 To establish a framework in which Council considers appropriate for Corporation staff to exercise delegated powers and functions in accordance with various legislation.
- 2.2 To ensure that the Adelaide City Council complies with the requirements of the Local Government Act 1999 and in particular Section 44, and any other Acts which specifically mention the making of delegations and which define how and what powers vested with the Council can be delegated to Corporation staff.
- 2.3 To ensure that Corporation Staff have the required delegated authority to act in accordance with instructions and directives from the Council to achieve the desired outcomes and milestones within the Adelaide City Council Strategic Management plan.
- 2.4 To ensure that delegations are employed by staff only in accordance with a policy or decision of Council.
- 2.5 To ensure that Council and not the delegate, determines matters that are contentious, controversial or which otherwise are considered (either by the Council or the Chief Executive Officer) to warrant consideration by the Council.
- 2.6 To ensure that the appropriate sub delegation structure is established from the Chief Executive Officer to other Corporation Staff.

3. Policy Statement

- 3.1 An open and transparent framework is pivotal for the Adelaide City Council regarding the co-ordination and maintenance of the Corporations delegated powers and functions.
- 3.2 Delegations will be determined and exercised with the aim of ensuring that a delegate is acting only as necessary to give effect to a policy or decision of Council, or as is essential for the smooth running of the organisation.
- 3.3 Delegations are necessary for the proper, efficient and effective administration of the Council. Delegation enables the Council to focus on policy and strategy and allows the day to day operations of the Council to be carried out by its administration. One of the functions of the Chief Executive Officer of the Council under the Local Government Act 1999 and the City of Adelaide Act 1998 is to undertake responsibility for the day

to day operation and affairs of the Council. Delegation enables the Chief Executive Officer to carry out this function. Another function of the Chief Executive Officer under both of those Acts is to provide advice and reports to the Council on the exercise and performance of the Council's powers and functions which assists the Council in fulfilling its role as a representative, informed and responsible decision-maker.

- 3.4 A delegation does not prevent the Council from acting in its own right in any matter and where the Council does so act in respect of a matter, the delegate shall not act nor exercise any delegation power or function in respect of that matter.
- 3.5 The Chief Executive Officer (or other staff member with delegated authority) shall refer to the Council, and not act or exercise any delegated power or function, any matter which in the Officer's opinion is contentious, controversial or otherwise warrants consideration by the Council for the Council to consider and make any determination necessary.

4. Legislative Requirements

- 4.1 Pursuant to Section 44 of the Local Government Act 1999, a Council may delegate power or functions vested or conferred under the Local Government Act or another Act that does not specifically provide for the delegation of powers.
- 4.2 A power may only be delegated via a Council resolution and a delegation may be made to:
 - A Council committee;
 - A Subsidiary of the Council;
 - An employee of the Council; or
 - An employee of the Council for the time being occupying a particular office or position.
- 4.3 A delegation is subject to conditions or limitations determined by the Council or specified by the regulations;
- 4.4 A delegation may be sub-delegated unless the Council directs otherwise;
- 4.5 A delegation is revokable at will and does not prevent the Council from acting in a matter (in which case the delegate shall not act).
- 4.6 If a power or function is delegated to an employee of the council, the employee is responsible to the Chief Executive Officer for the efficient and effective exercise or performance of that power or function;

- 4.7 The council must cause a separate record to be kept of all delegations under this section, and must at least once in every financial year review the delegations for the time being in force under this section;
- 4.8 A delegation must be clear, certain, specific and it is for this reason that purported blanket delegations of “all the powers and functions under this Act hereby delegated to” will not withstand legal scrutiny;
- 4.9 A person is entitled to inspect (without charge) the record of delegations under subsection (6) at the principal office of the council during ordinary office hours.

5. Non Delegable Powers and Functions

A council may not delegate—

- 5.1 power to make a by-law or to determine that a by-law applies only within a part or parts of the area of the council;
- 5.2 power to declare rates or a charge with the character of a rate;
- 5.3 power to borrow money or to obtain other forms of financial accommodation;
- 5.4 power to adopt or revise a strategic management plan of the council;
- 5.5 power to adopt or revise an annual business plan or budget of the council;
- 5.6 power to approve expenditure of money on works, services or operations of the council not contained in a budget adopted by the council;
- 5.7 power to approve payment or reimbursement of expenses that may be paid at the discretion of the council and for which the council has not adopted a formal policy or made specific financial provision;
- 5.8 power to establish a subsidiary, or to participate in the establishment of a regional subsidiary;
- 5.9 power to make an application or recommendation, or to report or to give a notice, to the Governor or the Minister, being an application, recommendation, report or notice for which provision is made by or under the Local Government Act 1999 or another Act;

- 5.10 power to fix, vary or revoke a fee under section 188(1)(d) to (h) of the Local Government Act 1999; and
- 5.11 a power or function excluded from delegation by the regulations.

6. Annual Review

- 6.1 The instrument of delegations must be reviewed at least once in every financial year to be compliant with provisions the Local Government Act 1999;
- 6.2 After every periodic and / or general election, the Risk & Planning team will co-ordinate and manage a full review of the delegation structure with the new elected Council in conjunction with the Executive Leadership Group and any other relevant staff.

7. Procedure

- 7.1 The Risk & Planning Team within the Finance & Risk Program will be responsible for the management, maintenance and the review of the Corporations delegations structure;
- 7.2 The Risk & Planning Team will;
- Prepare all instruments of delegations for Council consideration;
 - Make any required alterations to any delegation document (including sub-delegations) and / or schedules as instructed by the Council;
 - Ensure that copies of the delegation structure is available to the public;
 - Manage and co-ordinate the annual review process of the delegations pursuant to section 44(6) of the Local Government Act;
 - Ensure training, awareness and education is undertaken for those staff with delegated powers vested in their positions; and
 - Monitor legislative amendments that may affect the delegation structure and ensure delegations structure is altered accordingly;

8. Review

This policy will be reviewed inline with the Council's Policy Framework or earlier in the event of major changes to legislation or related policies / procedures.

9. Contact Information

For further information, contact the Risk & Planning Team.