

5.7. DELEGATIONS REGISTER POLICY

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RECOMMENDATION

That Council adopt the Delegation Register Policy as presented.

EXECUTIVE SUMMARY

The purpose of the Delegation Register Policy is to establish the framework for making, recording and exercising delegations made pursuant to S257, 258 and 259 of the *Local Government Act 2009*.

BACKGROUND

The Local Government Act 2009 confers a broad power to Council, Mayor and the Chief Executive Officer to delegate their powers, subject to certain exceptions.

Delegation by Council is not permissible:

- If the relevant legislation specifically provides that the power must be exercised 'by resolution' or that Council 'adopt'
- To an individual Councillor except in their capacity as a committee chairperson
- To officers other than the Chief Executive Officer

COMMENT

Once power is delegated to the Chief Executive Officer, it is then a matter for the Chief Executive Officer to exercise their power to further delegate to other Council officers (unless further delegation is prohibited or limited by Council).

PROPOSAL

That Council adopt the Delegation Register Policy as presented.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial implications to this process. Appropriate implementation of delegations to the CEO ensures the efficient use of Council resources.

RISK MANAGEMENT IMPLICATIONS

The administration of Council's responsibilities under the local government Acts carries with it inherent risk. Appropriate delegations form part of the risk management framework associated with these responsibilities.

SUSTAINABILITY IMPLICATIONS

- Economic:** The appropriate delegation of powers by Council assists with the efficient and timely utilization of Council's resources thereby extending the economic sustainability of these usually limited resources
- Environmental:** The appropriate delegation of powers by Council allows officers to respond to emergent events as well as provide continuous enhancement to the protection of the environment and its ongoing sustainability
- Social:** Appropriate delegation of powers by Council enables officers to provide efficient delivery of standard services to the community and gives authority to officers to respond to new projects approved by Council in response to community desires.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Goal 1 - We will conduct Council business in an open and transparent manner with strong oversight and open reporting.

Operational Plan 2019-2020 Actions:

5.1.1 - Develop a Project Decision Framework and an Administration Instruction.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

- Regulator** Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

ATTACHMENTS

1. Delegation Register Policy [5.7.1 - 5 pages]



DELEGATIONS REGISTER POLICY

Intent

The purpose of this policy is to establish the framework for making, recording and exercising delegations made pursuant to sections 257, 258 and 259 of the *Local Government Act 2009*.

Scope

The Local Government Act 2009 confers a broad power to Council, Mayor and the Chief Executive Officer to delegate their powers, subject to certain exceptions.

Delegation by Council is not permissible:

- If the relevant legislation specifically provides that the power must be exercised 'by resolution' or that Council 'adopt'
- To an individual councillor except in their capacity as a committee chairperson
- To officers other than the Chief Executive Officer

Once power is delegated to the Chief Executive Officer, it is then a matter for the Chief Executive Officer to exercise their power to further delegate to other Council officers (unless further delegation is prohibited or limited by Council).

Content

Principles

The following principles apply to delegations made:

- Any delegation does not derogate from the power of the Council or Chief Executive Officer to act in any matter
- Where a delegation is made to a Committee, it relates to the body acting as a Committee, not to individual members
- If the position or the body is abolished, restructured or re-named, the delegation is to be taken to be a reference to the successor to the functions of that position or Committee
- A delegation will refer to a delegate's office, or position, not to the individual in that position
- In exercising a delegation, delegates should make themselves aware of any specific Council policies, decisions, local laws etc. that may be relevant to the proposal
- Unless the context requires otherwise, a delegation relates only to authorities or functions within the delegate's area of accountability
- Where a delegation is given to an officer or officers, unless noted specifically to the contrary in the Register, a delegate's Supervisor (who holds immediate, intermediate or ultimate line management responsibility for the delegate) may exercise the delegated authority given to the delegate even if not mentioned by title as a delegate. This principle extends to each Supervisor in the hierarchy up to the Chief Executive Officer, but does not:
 - Apply if a subordinate delegate has already, in a particular case, exercised the delegation or

- Permit a supervising delegate to exceed his or her own financial delegation or act outside his or her area of accountability
- No delegate is authorised to nominate another officer to perform his or her delegated authority or function. A delegation is revokable and does not prevent the Council from acting in a matter (in which case the delegate shall not act)
- A delegation does not cease to have effect merely because the person who was the holder of the specified office when the power was delegated ceases to be the holder of the office
- Where a delegation is to the holder of an office, this will include any person acting in that position from time to time as well as any person replacing the original office holder
- Where a matter may be contentious, controversial or otherwise warrants consideration by the Council, the Delegate shall not act or exercise any delegated power or function to that matter
- Where a power to decide or approve an application is delegated in this Register, the delegation includes the power to:
 - Approve the application;
 - Approve the application, subject to reasonable and relevant conditions, or
 - Refuse the application.
- Nothing in this Register authorises a delegate to do anything which is, or is likely to be, a breach of legislation or the code of conduct for employees
- A delegation cannot be exercised where the officer holding the delegation would be put in a position of conflict of interest. This includes, in particular, where the officer would obtain a personal benefit of some material kind. In such circumstances, the conflicted delegate must refer the decision to his or her Supervisor and must not exercise the delegated authority.

Registers

Douglas Shire Council keeps a Register of Delegations comprising of parts, which contain particulars of delegations made by:

- Council to the Mayor; Standing Committee or Joint Standing Committee; Chairperson of a Standing Committee or Joint Standing Committee
- The Mayor to other Councillors
- Council to the Chief Executive Officer
- The Chief Executive Officer to Employees and Contractors, which include sections on general delegations and financial delegations

The Register is divided into numerous sections, for each relevant Act, Regulation and Local Law in respect of which Council may exercise a power:

- Listing the matters in which the right to act or exercise discretion has been so delegated by resolution of the Council
- Containing the title of the position, or the name of the committee, to whom the powers are delegated
- Containing the date of the resolution by the Council

The Register of Delegations by the Mayor must not delegate the following powers:

- A power delegated by Council, if Council has directed the Mayor not to further delegate the power
- A power to direct the Chief Executive Officer or Senior Executive employees

The Register of Delegations by the Chief Executive Officer is divided into numerous sections, for each relevant Act, Regulation and Local Law in respect of which Council or the Chief Executive Officer may exercise a power and to document the financial delegations, however, the Chief Executive Officer must not delegate the following powers:

- A power delegated by Council, if Council has directed the Chief Executive Officer not to further delegate the power
- Power to keep a register of interests

New or Amended Delegations

New, amended or removal of Delegations by Council can only be achieved by a resolution at a Council meeting.

Applications for any new Delegation or to amend or remove a Delegation must be in writing that has been approved by the Chief Executive Officer.

New Delegations or an amended or removed Delegation by the Mayor to other Councillors will be made in writing approved by the Chief Executive Officer and recorded as soon as practical after the Mayor has delegated a power.

Applications for a new Delegation or to amend or remove a Delegation made by the Chief Executive Officer can only be approved by the Chief Executive Officer.

General Correspondence and Other Documentation

The following general limitations are to be applied where the Chief Executive Officer is delegated the power to sign a document (including contracts, applications, forms and returns) on behalf of the Council and further delegates the power to other officers:

- To be aware of specific Statutes and Council policies, decisions, local-laws etc. which relate to the matter. This is a key responsibility which forms an integral part of the delegation
- To respond to correspondence in a prompt and timely manner
- To use common language, which is courteous and respectful
- Where the subject matter appears to the officer to be potentially controversial or to have major policy ramifications, the draft should be discussed with the relevant Manager or Chief Executive Officer prior to being finalised.

The following class of correspondence is to be signed by the Chief Executive Officer, unless expressly delegated to an officer:

- Letters to Ministers of the Crown, Members of State or Federal Parliament
- Letters to elected members of other local governments
- Letters relating to complaints about the alleged official misconduct of any employee
- Letters to external review bodies, e.g. Ombudsman, Crime and Corruption Commission, etc

Financial Delegation

All expenditure incurred by the Council must be for Council purposes and comply with the provisions of the *Local Government Act 2009* and relevant policies (including Council's Procurement Policy), as determined by Council from time to time.

Financial Delegation – Procurement

Financial Delegates have authority to commit funds for procurement purposes within the budget approved by Council, subject to the limits (ex GST) identified in any delegation. The financial delegations detail the maximum value for financial related functions and activities within the Council. Such delegation is limited to those areas and accounts for which the delegated officer has responsibility and the commitment or expenditure must be in accordance with the purpose for which the funds were allocated, Council's accounting policies.

Accountability

Financial Delegates who authorise the commitment of Council funds are held fully accountable for that decision and should be able to justify the decision.

Responsibilities

Chief Executive Officer

The Chief Executive Officer is responsible for:

- Keeping the Register
- Delegating powers to appropriately qualified employees

Manager Governance

The Manager Governance is responsible for:

- Assisting the Chief Executive Officer to maintain the Register, ensuring that it is updated with all authorised amendments and that appropriate version control is applied
- Co-ordinating annual reviews of the Register
- Monitoring and recording the reporting provisions

Advice of Delegation

Once a delegation has been made, the Chief Executive Officer will provide general advice to each delegate. It is the responsibility of each Officer to ensure that they have an appropriate delegation before acting.

Legislation

- *Local Government Act 2009*

Related Policies & Documents

- Procurement Policy - Doc # 814364
- Code of Conduct – Doc # 462781
- Council to Chief Executive Officer Delegation Register – Doc #
- Chief Executive Officer to Employee or Contractor Register – Doc #
- Delegation Register Under s257 – Doc #
- Matters that require a Resolution of Council (Cannot be delegated) Checklist – Doc #

