

Council Policy

Mayor Seeking Legal Advice



COUNCIL POLICY

 <p>Adelaide Hills COUNCIL</p>	MAYOR SEEKING LEGAL ADVICE
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Policy Number:	CM-03
Responsible Department(s):	Governance & Risk
Relevant Delegations:	Nil
Other Relevant Policies:	Council Member Conduct Council Member Allowances & Benefits Procurement and Purchasing Policy
Relevant Procedure(s):	Nil
Relevant Legislation:	<i>Local Government Act 1999</i>
Policies and Procedures Superseded by this policy on its Adoption:	28 June 2011, Item 10.11, 205
Adoption Authority:	Strategic Planning and Development Policy Committee
Date of Adoption:	<i>To be added administratively</i>
Effective From:	22 September 2015
Minute Reference for Adoption:	Item 12.2, 44
Next Review:	No later than September 2018 or as required by legislation

MAYOR SEEKING LEGAL ADVICE

1. INTRODUCTION

As a general rule, any legal advice obtained on behalf of a Council will occur through the CEO or be authorised by the CEO through delegation or a Council resolution. A CEO of a Council is responsible for the implementation of lawful Council decisions and for the overall administration and budget management of the Council. However, there may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the CEO.

2. OBJECTIVES

This policy is designed to set out Council's position in relation to the circumstances in which the Mayor/Chairperson is authorised to seek legal advice independently of the CEO.

3. SCOPE

This Policy applies to all Council Members, who each have an obligation to abide by this Policy.

4. LEGISLATION

Sections 6 to 8 inclusive of the *Local Government Act 1999* (the Act) sets out the role, functions and objectives of a council. Sections 58 and 59 of the Act set out the specific roles of a principal member (Mayor) and the roles of all members of councils.

Section 137 of the Act authorises a council to expend its funds, viz:

“Subject to this or another Act, a council may expend its funds as the council thinks fit in the exercise, performance or discharge of its powers, functions or duties under this or other Acts.”

5. POLICY STATEMENT

In circumstances in which it is not possible or appropriate for the CEO to seek legal advice, the Mayor should, ideally, seek a Council resolution to obtain legal advice. However, where this is not possible, the Mayor/Chairperson may seek the advice independently as set out below.

5.1 Urgent matters relating to a Council Meeting if the CEO is unavailable

While the CEO and senior staff have a good working knowledge of Council meeting procedures, matters may arise from time to time which require an urgent legal opinion. Where legal advice is required in the absence of the CEO and appropriate senior staff:

- a. The Mayor may seek legal advice in situations in which a response is required urgently, including for an imminent Council meeting or other urgent matter;
- b. Any legal advice obtained in this way will be reported to the Council at the earliest available meeting (which may be conducted ‘in confidence’ for this purpose under section 90(3)(h) of the *Local Government Act 1999*);

- c. The legal advice will also be provided to the CEO (unless this is not appropriate – see below).

5.2 The legal advice relates to the CEO or the exercise of the CEO's powers

In circumstances where Council is to consider a matter related to the CEO (e.g. urgent employment related issues or where the Council is investigating a failure by the CEO to comply with a resolution of Council or where a matter relates to the exercise of a CEO's powers) and it is the view of the Mayor that the consideration of this matter by the Council should occur with the benefit of legal advice:

- a. The advice will be obtained as a matter of administrative necessity¹ by the Mayor to ensure the legality of the Council's actions and decisions. The Mayor may confer with relevant senior Council staff where the legal advice relates to the CEO's employment or other personal matter;
- b. The Mayor may confer with other relevant senior Council staff if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest matter relating matters disclosed in the register of interests;
- c. The Mayor will keep the Council fully informed of any advice obtained on behalf of the Council and advise members of the advice received at the next available meeting;
- d. Where the Mayor has obtained the advice other than in accordance with a Council resolution Council should, as a matter of caution, retrospectively endorse the Mayor's decision to obtain the advice.

6. PROCUREMENT PROCESSES

The procurement of legal advice under this Policy must be conducted in accordance with Council's Procurement and Purchasing Policy.

7. RECORD KEEPING AND CONFIDENTIAL DOCUMENTS

Where the Mayor obtains legal advice relating to the CEO or the exercise of the CEO's powers, and it is not appropriate to provide that advice to the CEO, the advice must be placed in the records management system in such a way as to ensure that it cannot be accessed by the CEO. This procedure will also apply to other documents relevant to the matter which, in the opinion of the Council, should be kept confidential.

The documents will be made accessible only to the Mayor and the Records Supervisor or subject to the direction of the Mayor or a resolution of Council. These restricted access records will be maintained in accordance with the *State Records Act 1997* and will remain subject to assessment as part of any relevant application made under the *Freedom of Information Act 1991*.

¹ The concept of 'administrative necessity' has been judicially considered in relation to the exercise of public power and is based on the reasoning that there may be circumstances where the person upon whom that power has been conferred (or a delegate) is unable to exercise the power, in which case, the exercise of that power by another (without delegated authority) is justified at law

8. DELEGATION

Council makes the following delegations:

- The Mayor has the delegation to procure legal services to the value of \$10,000 (GST exclusive).
- The Chief Executive Officer has the delegation to approve, amend and review any procedures that shall be consistent with this Policy.

9. AVAILABILITY OF THE POLICY

This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website www.ahc.sa.gov.au. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.