


COUNCIL POLICY

 <p>Adelaide Hills COUNCIL</p>	MAYOR SEEKING LEGAL ADVICE
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Policy Number:	CM-03
Responsible Department(s):	Governance & Performance
Relevant Delegations:	As per the Delegations Register and as detailed in this Policy
Other Relevant Policies:	Council Member Conduct Council Member Allowances & Support Procurement
Relevant Procedure(s):	Nil
Relevant Legislation:	<i>Local Government Act 1999</i>
Policies and Procedures Superseded by this policy on its Adoption:	8 September 2015, SPDPC, Item 12.2, 44
Adoption Authority:	Council
Date of Adoption:	28 September 2021
Effective From:	11 October 2021
Minute Reference for Adoption:	Item 12.5, 209/21
Next Review:	No later than September 2024 or as required by legislation

Version Control

Version No.	Date of Effect	Description of Change(s)	Approval
1.0	28/6/2011	Initial Policy	Council - Res 205
1.1	8/9/2015	Nomenclature and legislative updates and creation of a procurement delegation to the Mayor (for procuring legal advice only)	SPDPC – Res 44
1.2	28/9/2021	Policy Review with minor amendments	Council – Res 209/21

MAYOR SEEKING LEGAL ADVICE POLICY

1. INTRODUCTION

- 1.1 As a general rule, any legal advice obtained on behalf of a Council will occur through the Chief Executive Officer (CEO) or be authorised by the CEO through delegation or a Council resolution.
- 1.2 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

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

3. SCOPE

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

4. LEGISLATION

- 4.1 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.
- 4.2 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

- 5.1 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 may seek the advice independently as set out below.

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

- 5.2.1 While the CEO and senior staff have a comprehensive knowledge of Council meeting procedures, matters may arise from time to time which require an urgent legal opinion.

- 5.2.2 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 at the earliest opportunity (unless this is not appropriate – see below).

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

- 5.3.1 In circumstances where Council is to consider a matter related to the CEO (e.g. urgent CEO-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 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

- 6.1 The procurement of legal advice under this Policy must be conducted in accordance with Council's *Procurement Policy* although procedural elements of the *Procurement Framework* will not be able to be complied with contemporaneously.

7. RECORD KEEPING AND CONFIDENTIAL DOCUMENTS

- 7.1 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

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

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.

- 7.2 The documents will be made accessible only to the Mayor, Executive Manager Organisational Development and the Team Leader Information Management 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*.

8. DELEGATION

- 8.1 Council makes the following delegations:
- a. The Mayor has the delegation to procure legal services to the value of \$10,000 (GST exclusive) per matter.
 - b. The Chief Executive Officer has the delegation to approve, amend and review any procedures that shall be consistent with this Policy and
 - c. The Chief Executive Officer has the delegation to make any formatting, nomenclature or other minor changes to the Policy during the period of its currency

9. AVAILABILITY OF THE POLICY

- 9.1 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.