



POLICY DOCUMENT

9.63.22

Policy Name	Mayor Seeking Legal Advice
Policy No.	9.63.22
Version:	1
Strategic Reference:	
Responsible Department:	Corporate & Community
Policy Adopted:	15 April 2021
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Next review date:	Council will review this policy 4 years after adopted date or following significant change to legislation or where required by relevant public policy considerations.
Applicable Legislation:	Local Government Act 1999 Freedom of Information Act 1991 State Records Act 1997
Related Policies:	Records Management Policy 13.63.3
Related Documents:	N/A

1. **PURPOSE**

This policy outlines Council's position in relation to the circumstances in which the Mayor may be authorised to seek legal advice independently of the CEO either under a policy adopted by Council or by a resolution of Council.

2. **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 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. It is acknowledged, however, that there may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the CEO.

3. **COUNCIL MEMBERS AUTHORISED TO OBTAIN LEGAL ADVICE DIRECTLY**

Individual Members of Council can not be delegated the power to expend Council funds. However, there are limited circumstances where it may be justifiable at law for the Mayor to obtain legal advice directly on behalf of Council.

As the Mayor is the principal spokesperson of the Council under the Local Government Act, he/she has the sole responsibility to communicate the position of the Council to members of the public in an official capacity (including to a legal practitioner from whom legal advice is sought).

In the absence of the CEO, under section 102(c) of the Local Government Act, the Mayor may be required to appoint a suitable person to act as CEO. The Mayor has the ability to obtain legal advice directly in relation to this matter as is necessary in their role and functions of the office.

4. CIRCUMSTANCES IN WHICH IT IS APPROPRIATE FOR THE MAYOR TO SEEK LEGAL ADVICE

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.

4.1. *Urgent matters relating to a Council Meeting if the CEO is unavailable*

While the CEO (and other Council staff) have a good working knowledge of Council meeting procedures, matters may arise from time to time which require a Member of Council to seek an urgent legal opinion in the absence of the CEO. Where legal advice is required in this instance:

- The Mayor (not other Members of Council) may seek legal advice in situations in which a response is required urgently, including for an imminent Council meeting or other urgent matter ie: meeting procedure, conflict of interest and or validity of any proposed decision;
- 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*);
- The legal advice will also be provided to the CEO (unless this is not appropriate)

4.2. *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:

- The advice will be obtained as a matter of administrative necessity by the Mayor to ensure the legality of the Council's actions and decisions;
- The Mayor will not confer with Council staff where the legal advice relates to the CEO's employment or other personal matter;
- The Mayor may confer with other relevant senior Council staff, such as the Deputy/Acting CEO or Human Resources Manager, if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest matter disclosed in the register of interests;
- 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;
- Where the Mayor has obtained the advice other than in accordance with a Council resolution, as a matter of caution, Council should retrospectively endorse the Mayor's decision to obtain the advice.

5. 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 password accessible and only be available to the Mayor, the General Manager Corporate & Community and/or the Manager People, Governance & Communication.

All electronic records will be entered into Council's records management system with a security level that restricts access to authorised personnel only and any hardcopy paper based records will be kept in a separate locked cabinet under the custody of the General Manager Corporate & Community and/or the Manager People, Governance & Communication.

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*.

6. RELEVANT DELEGATED POWERS AND DUTIES

Any actions or decisions made regarding this policy, will be taken in accordance with Council's current Delegations Register.