



Council Policy Manual 2018

Administrative Arrangements - Appendix

The contents requires review



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Statutory and Corporate Context

The Council is responsible for functions and activities under numerous Acts and other legislation, many of which permit Council to delegate responsibilities and authority to various officers, and to stipulate conditions, standards or methods of control and management.

This Council Policy Manual has been prepared to complement a range of obligations imposed by legislation including local laws, and various document adopted by Council.

The order of priority for compliance is –

1. Federal and State legislation and regulations,
2. Local Planning Scheme,
3. a specific resolution of Council,
4. Delegations Register – being specific authorisations resolved by Council, and having a statutory context under the Local Government Act, they are the standing authorisations of Council to particular persons, almost exclusively the CEO,
5. Local Planning Policy – as it is made under the authority of the Local Planning Scheme, by resolution of Council,
6. Council Policy – being instructions resolved by Council they are the standing instructions of Council on how particular matters are to be dealt with,
7. Instruction – standing instructions or procedures issued by the CEO,
8. administrative directions or instructions.

Although not decisions of Council, and therefore not a requirement of staff, consideration should be given to the following as being best practice –

- DLGRD Guidelines
- WALGA Councillors Manual, Practice Notes etc.

Unless specifically resolved that the instruction is to be included in the Policy Manual, it is considered that it is for a specific matter, and is not a general or on-going instruction.

There are some policies that have specific legislative provision, and these are noted in the individual policy.

IMPORTANT – Consequences of Breaching Council Policy

Where there is a breach of Council Policy –

- a) it may result in disciplinary action up to and including termination of employment,
- b) the Shire may also be obligated to refer a breach to an external agency where an employee may be held personally liable for their actions;
- c) the employee in breach may also be personally liable for their actions, such costs charged to the Shire or to repair as a result of the private/personal or unauthorised use.

Application – is to staff, not to community

Policy cannot be used to control or manage the general community – it is essentially an instruction to staff that in particular circumstances, a specific action or process is to be followed, for instance –

- Hire of facilities – if there is damage, then staff are to invoice the hirer or cancel their booking etc
- Caravan Park Rules – if a patron does not comply with these, staff are to take action
- HR / Personnel policies – outlines the circumstances in which actions are to be taken
- Crossovers – staff may approve if an application complies with requirements, or take action if a crossover does not comply.



A Policy cannot be applied directly to the community as they may not be aware of its adoption. The community has to have had the opportunity to be aware of the requirements imposed on them.

However, policy may require staff to apply specific conditions to a licence, permit etc, and to provide a written copy of the conditions being applied. These conditions applied are then enforceable.

Advertising of a local law constitutes community wide notification, whether the person is aware of it or not. Accordingly, many policies expand on how a Local Law is to be interpreted or acted upon by staff.

Definitions

The LG Act has not defined the term “delegation” or “delegated power”. However:

- s.5.16 refers to “... the exercise of any of its powers and duties ...”
- s.5.42 refers to “... the exercise of any of its powers or the discharge of any of its duties ...”

The term “policy” is not defined anywhere in the LG Act, however, Departmental guidelines refer to Council “acting through” the administration to fulfil requirements and obligations.

The following terms used in this document apply insofar as they are consistent with enabling legislation –

authority means the permission or requirement for Council, a Committee or a person to act in accordance with –

- the Local Government Act, Regulation or other legislation,
- a delegation made by Council,
- a Council Policy,
- a specific decision of Council, or
- an instruction.

delegation means the authority for a Committee, the CEO or other person to exercise a power, or discharge a duty, as conferred by absolute majority decision of Council under the provisions of the relevant legislation.

Council Policy is a standing instruction resolved by Council as to how a particular matter is to be implemented:

Planning Policy is a standing instruction resolved by Council as to how a particular matter is to be implemented. They are made by authority of the Local Planning Scheme, within a different legal and procedural framework, having specified process in order to be enforceable, and are generally advised to the WA Planning Commission .

instruction means the requirement for a staff member to act in accordance with a direction given by the Council, the CEO, senior officer or supervisor.

Guidelines No.17 – Delegations (Department of Local Government)

The Department of Local Government and Communities has published Guidelines for the formation of Delegations.

The Guidelines outline the concept of “delegation” and “acting through” in parts 3 and 4, particularly in paragraph 13 where it is stated –

... the key difference between a delegation and “acting through” is that a delegate exercises the delegated decision making function in his or her own right. The principal issue is that where a person has no discretion in carrying out a function, then that function may be undertaken through the “acting through” concept. Alternatively, where the decision allows for discretion on the part of the decision maker, then that function needs to be delegated for another person to have that authority



Making, Amending and Revoking Council Policy

Administrative Policy requires approval by a simple majority of Council, and may be made, amended or revoked at any time by Council.

Council may impose limitations on Policy or the functions delegated as they see fit.

Review of Council Policy

There is no required timetable for the review of policy, however, it is suggested that it should be done regularly to ensure that policies are relevant, current and understood.

To maintain the Policy Manual up to date, an administrative review should be reviewed at least once a year, and a report made to Council on matters needing amendment or inclusion.

It is suggested that detailed consideration of all policies be undertaken by Council at least once every two years.