

COUNCIL POLICY



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| Policy Name | Delegated Authority |
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Abstract

The purpose of this Policy is to provide clear, guiding principles and a framework for the use of delegated authority within Gunnedah Shire Council.

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| Dates | Policy or amendment approved Policy or amendment takes effect Policy is due for review (up to 4 years) | 20 Apr 2016 20 Apr 2016 20 Apr 2020 |
| Endorsed by | Executive Manager Business Systems and Governance | |
| Approved by | Gunnedah Shire Council at its Ordinary Meeting of Council held 20 Apr 2016 Resolution number: 14.04/16 | |
| Policy Custodian | Executive Manager Business Systems and Governance | |
| Relevant to | Councillors, Committee members and Council staff | |
| Superseded Policies | Nil | |
| Related Documents | Council's Code of Conduct and Procedure documents on Delegated Authority. | |
| Related Legislation | Local Government Act 1993 Local Government (General) Regulation 2005 Independent Commission Against Corruption Act 1988 Noxious Weeds Act 1993 | |
| File Number | 964595 | |

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1. Purpose

- 1.1 To provide clear, guiding principles and a framework for the use of delegated authority within Gunnedah Shire Council.
- 1.2 To facilitate the efficient and effective operation of the Council by providing the Mayor, Deputy Mayor, General Manager, Committees and Council staff with sufficient power and authority to generally manage, control and administer the affairs of the Council on a day-to-day basis.
- 1.3 To ensure that Gunnedah Shire Council complies with the requirements of the Local Government Act 1993, which defines how and what powers vested with the Council can be delegated to Council employees.

2. Scope

- 2.1 This Policy applies in full to Council's Mayor, Deputy Mayor, General Manager and staff who in the performance of their roles require delegated authority to perform their duties, together with individuals or bodies who have delegated authority from the Council from time to time.
- 2.2 This Policy is to be read in conjunction with all applicable legislation, and Council's Procedure documents relating to delegations.

3. Definitions

| Term | Meaning |
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| Act | The Local Government Act (NSW) 1993 |
| Authorisation | The granting of permission which enables a person to act on behalf of the person or body providing the authorisation. |
| Authorised Person | The recipient of the authorisation/appointment. |
| Authoriser | Is a position that has power to sign an Instrument of Authorisation/Appointment. |
| Delegate | The recipient of the delegation. |
| Delegation | The granting of permission which enables a person to act on the behalf of a person or body providing the delegation. |
| Delegator | Is a position that has power to sign an Instrument of Delegation. |
| Functions | Includes powers, duties and authorities that are charged to individuals or bodies. |
| Regulations | Local Government (General) Regulation 2005. |

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| Sub-delegations | The partial or full passing of a delegation, by a person or body who holds such delegations, to another individual or body (for example, the General Manager providing delegations to staff). |
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4. Policy Principles

- 4.1 Delegations are intended to improve the efficiency of the administrative processes of Council by the assignment of authority and accountability to appropriate staff and/or Council Committees to enable the proper discharge of their responsibilities and to ensure that internal controls are effective.
- 4.2 The provisions of the Interpretation Act 1987 (NSW) are reflected in this Policy and apply to all delegations.
- 4.3 A delegation may be general or limited. A delegated function may be exercised **only** in accordance with any conditions or limitations to which the delegation is subject.
- 4.4 Delegations are to be made and exercised in accordance with all applicable legislation as well as Council's Code of Conduct, policies and budget limitations.
- 4.5 If a delegation refers to a Council policy, it is taken to refer to the current version of that policy or the successor to that policy at the time the delegation is exercised.
- 4.6 If legislation referred to within a delegation is superseded by updated or new legislation, the delegation applies to the new legislation to the extent practicable.
- 4.7 A person or body exercising a delegated function does so in their own right, not as agent (or on behalf of) the person or body delegating the function.
- 4.8 Where a staff member is acting in a position that has powers delegated to it, the person acting in that position can exercise the powers of the delegate.
- 4.9 Where a function is delegated to more than one position, each position may exercise the delegated function independently unless otherwise indicated.
- 4.10 A delegation cannot be exercised by a person who has a conflict of interest. If any conflict of interest occurs, it must be declared immediately and dealt with in accordance with Council's Code of Conduct.

5. Policy Statement

5.1 Introduction

Councils have certain functions and duties that they must perform, and certain powers which they may exercise pursuant to the Local Government Act 1993 ("the Act") as well as a number of other Acts. Generally, the relevant Acts grant those obligations and powers directly on the Council as a body.

It is neither practical, nor efficient for the Council body (Council's small number of elected members) to perform the many functions or undertake the many activities that are required in the day-to-day administration of the role of the Council. Delegations are the way in which Council can enable other people/bodies (usually Council officers) to undertake these steps on its behalf.

This Policy outlines the formal steps that need to be followed in the creation of delegations. If delegations are not done properly, the enforceability of decisions and actions taken may be compromised and may also cause administrative and/or legal problems for Council.

5.2 Power to Delegate under the Local Government Act 1993

Council's power to delegate is provided for in Chapter 12, Part 3 of the Act, as well as other relevant sections.

Section 377 of the Act provides that the Council may delegate any of its functions, other than those specified in Section 377(1), to the General Manager or any other person or body (such as a Committee or Panel). A Council cannot however, delegate directly to another employee of the Council.

The General Manager must be delegated the necessary functions to be able to then sub-delegate those functions to an employee. This is provided for in Section 378 of the Act, whereby the General Manager may delegate any of the functions of the General Manager, other than the power of delegation.

The Act places restrictions on the regulatory functions of a Council under Chapter 7, in that they must not be delegated or sub-delegated to a person or body, other than those specified in Section 379 of the Act.

5.3 Power to delegate under other legislation

There are exceptions to a Council delegating under the Local Government Act, 1993.

For example, Section 68 of the Noxious Weeds Act 1993 states that a Council may **not** delegate any of its functions as a local control authority under the Noxious Weeds Act using the Council's power of delegation provided in the Local Government Act.

As such, separate Instruments of Delegation for functions under this Act (or any other Act with similar restrictions) need to be created.

5.4 Form of Delegation

5.4.1 Delegations must be in writing (in the form of an Instrument of Delegation or Sub-delegation) and may be expressed to be subject to certain conditions and limitations with which the body or person exercising the delegated function(s) must comply.

5.4.2 Instruments of Delegation or Sub-delegation are to be worded so that they are exercisable by either a body or the holder of a position, not by a specified individual.

- 5.4.3 Delegations made by Council must be authorised by resolution of Council, signed by the delegator and signed in acknowledgment by the delegate. The wording of the resolution and the delegation itself are important as it is the resolution that makes the delegation and the instrument which sets out the scope of the delegation.
- 5.4.4 Sub-delegations are to be authorised and signed by the General Manager and signed in acknowledgment by the delegate.

5.5 Appointments and Authorisations

- 5.5.1 Under several pieces of legislation, Council is given a power to:
- (a) Authorise a person to enter land and exercise other investigative functions; and
 - (b) Appoint a person to hold a particular position or title under the Act.
- 5.5.2 If an authorisation or appointment is to be made by the General Manager, the Council must have delegated the power to do so.
- 5.5.3 The authorisation or appointment of each person is to be documented in an Instrument of Appointment and may be expressed to be subject to certain conditions and limitations with which the authorised person must comply.
- 5.5.4 Instruments of Appointment are only to be made and signed by the authoriser (Council or General Manager). They also need to be signed in acknowledgment by the authorised person.
- 5.5.5 In some instances, legislation dictates that certain appointments or authorisations may only be allocated to persons who hold requisite qualifications, experience or training. Instruments of Appointment are therefore to be worded so that they are exercisable by a specified individual rather than a body or holder of a position.
- 5.5.6 Some legislation further requires that persons authorised to exercise powers of entry and associated powers (whether by an authorisation or appointment), must be in possession of a written authority to do so. To ensure compliance with this requirement, Council will issue Authority Cards to all authorised/appointed persons, where applicable.

5.6 Authority Cards

- 5.6.1 Authority Cards will be provided to authorised/appointed persons before commencement of duties and are to be returned on either change or cessation of their role.
- 5.6.2 It is imperative that authorised/appointed persons carry their Authority Card(s) with them at all times when exercising or intending to exercise a function of power under any Act.
- 5.6.3 A copy of all Authority Cards is to be filed within Council's Records Management System.

5.7 Terms of Delegation

5.7.1 Delegations remain in force until the delegator decides to in writing, revoke or vary the delegation.

5.7.2 Council will look to review all delegations every two (2) years and **at least** within the first twelve (12) months of each term of office (as per Section 380 of the Act).

5.7.3 There will be additional times when delegations will require revision, such as when:

- Council resolves to change a power delegated to the General Manager or as a result of amended legislation;
- the General Manager determines that a new delegation needs to be made or an existing delegation amended;
- a staff member resigns and someone new is appointed to a position; or
- a position (or department) undergoes a name change, or has its responsibilities revised.

Any new or amended Instrument of Delegation or Appointment resulting from such will only be effective once signed by the relevant parties.

Roles and responsibilities regarding these instances are covered in Section 6 of this Policy.

5.8 Record Keeping

All decisions taken under delegated authority are to be recorded within Council's Record Management System.

5.9 Register of Delegations

Delegations are to be recorded in a Register of Delegations with viewing access to be granted to all persons who have delegated authority.

5.10 Register of Appointments/Authorisations

The only piece of legislation which currently requires councils to keep and maintain a list of authorised persons appointed by it is the Food Act 1993 (s114(2)), however as a matter of best practice, Council will maintain a comprehensive register of all authorisations/appointments made by Council.

5.11 Policy Compliance

5.11.1 All persons acting under delegated authority are expected to read this Policy carefully so as to ensure that they understand and are familiar with the requirements with which they are to comply.

5.11.2 Non-compliance with this Policy may result in appropriate remedial action in the form of disciplinary action and/or dismissal, being taken.

6. Accountability, Roles and Responsibilities

6.1 Authorisation – General Manager

The General Manager is responsible for authorising all Sub-delegations of Authority and Appointments.

6.2 Policy Custodian – Executive Manager, Business Systems and Governance

Council's Executive Manager of Business Systems and Governance is the officer accountable for managing policy compliance, initiating the policy review process, internal auditing requirements, and has responsibility for all aspects of policy implementation, unless appropriately delegated to another officer.

6.3 Delegators/Authorisers

It is the responsibility of the delegator/authoriser to assess and determine whether a potential delegate/authorised person is suitably qualified to be able to exercise the function(s) to be charged to them, with due skill and care.

Consideration needs to be given to the powers to be exercised by the authorised person, the relevant council position description, the potential appointee's formal qualifications, training and/or experience, their manager's recommendations and any prerequisites as set by the relevant legislation.

6.4 Delegation or Authorisation Request – Directors/Managers

Directors/Managers are responsible for completing requests for Sub-delegations/Authorisations and Authority Cards (or for changes to them) for staff members under their control and for ensuring that those staff members have the appropriate delegations/authority granted to them, prior to them exercising their functions.

Directors/Managers are also responsible for advising Council's Governance Team via email of any changes to position titles, to enable accurate correlation between Council's organisational structure and Delegations/Appointments Databases.

6.5 Compliance – Delegates/Authorised persons

All delegates/authorised persons are only to act in the capacity in which they are duly authorised. It is a delegate/authorised person's responsibility to ensure that they are familiar with and clearly understand the extent of the authority that is being charged to them including any limitations and conditions not only set by the delegator/authoriser but also by the relevant legislation.

All persons acting under delegated authority/appointment will be held responsible and accountable for any outcomes.

It is the responsibility of any person issued with an Authority Card, to return the Card on change or cessation of their employment with Council.

6.6 Assistance - Governance Team

Council's Governance Team is responsible for the creation and maintenance of Council's Delegation Database and associated templates, request forms and procedures.

6.7 Responsibility – Conflict of Interest

Responsibility for notifying the presence of a potential conflict of interest rests with each participating individual.

7. Acknowledgements

7.1 The following acknowledgements are made recognising organisations or documents that have provided a basis, instructive comment or templates that have been used to develop Council's Policy on Delegated Authority:

- (a) ICAC website "Preventing Corruption – Knowing your Risks – Delegation of Authority";
- (b) Wagga Wagga City Council Delegations Policy;
- (c) Bathurst Regional Council Delegations Register; and
- (d) Local Government Legal.

8. Version Control and Change History

| Date | Version | Approved by & resolution no. | Amendment |
|----------|---------|------------------------------|--------------------------------|
| Dec 2015 | 1.0 | | To fulfil ICAC recommendations |
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