

Keywords: *Delegations, Good Governance*

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| Corporate Plan: | |
| Classification: | <i>Executive Services</i> |
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| Responsible Officer(s): | <i>Chief Executive Officer/Executive Assistant</i> |
| Council File Reference: | <i>Council Policies (P)</i> |
| Applicable Legislation: | <i>Local Government Act 1999, Section 44</i> |
| Relevant Policies: | |
| Related Procedures: | <i>N/A</i> |
| Delegations: | <i>Berri Barmera Council Delegations Register</i> |

1. Purpose

- 1.1. The decision-making process for the Council starts with a power or function conferred upon it by statute. The Council, as a governing body, is then required to make decisions by resolutions passed at a Council meeting.
- 1.2. Administratively and operationally, the Council, as a governing body, simply cannot attend to all matters arising for action and determination. Accordingly, for the purposes of conducting its governing and regulatory activities effectively and efficiently, the Council delegates its powers and/or functions.
- 1.3. A 'delegation' is the means by which the Council may authorise another person or body to exercise certain powers and functions, and enables the Council, as a governing body, to focus on policy and strategy, leaving the Chief Executive Officer ('the CEO'), and through the CEO, the employees, to attend to the day-to-day operations of the Council.
- 1.4. Delegations are a fundamental part of good governance and play an important role in ensuring that the Council is acting in accordance with the legal and policy framework that applies to it.
- 1.5. It is important that delegations are managed effectively to ensure decisions are validly made by a lawfully appointed delegate.

2. Definitions

For the purpose of this Policy:

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| Act | means the Local Government Act 1999; |
| Chief Executive Officer ('CEO') | means the Chief Executive Officer of the Council (including any person acting in that Office); |
| Council | means Berri Barmera Council; |
| Delegation | means a delegation made by the Council under section 44(2) of the Act, and includes any sub delegation made by the CEO (or other 'head' delegate); and |
| Delegations Register | means the written record of all delegations made by the Council. |

3. Principles

- 3.1. This Policy applies to the CEO, and any employee who, in the performance of their duties, require delegated authority to perform those duties, together with any other bodies who have delegated authority from the Council from time to time.
- 3.2. This Policy establishes a framework for delegating authority by, and within, the Council, in a manner that facilitates efficiency and increases the accountability of employees for their performance.
- 3.3. Delegations will be made to achieve the following objectives:
- 3.4. Delegations will be made to achieve the following objectives:
 - 3.4.1 to ensure the efficiency and effectiveness of the Council's administrative processes;
 - 3.4.2 to ensure appropriate employees have been provided with the level of authority necessary to discharge their roles and responsibilities;
 - 3.4.3 to ensure that delegated authority is exercised by the most appropriate and competent individuals within the organisation;
 - 3.4.4 to ensure internal controls are effective; and
 - 3.4.5 to ensure transparency in decision making by ensuring that delegations to employees are clearly defined and recorded.

4. Procedure

- 4.1. Section 44 of the Act provides an express power for the Council, by resolution, to delegate its powers and functions to:
 - a Council committee; or
 - a subsidiary of the Council; or
 - an employee of the Council for the time being occupying a particular office or position; or
 - an authorised person.

- 4.2. Section 44(3) of the Act sets out the functions which the Council cannot delegate, being powers generally related to public interest and policy decisions.
- 4.3. Pursuant to section 44(4) of the Act, a delegation by the Council, as a governing body:
 - 4.3.1 is subject to conditions and limitations as determined by the Council, or as specified by the regulations; and
 - 4.3.2 if made to the CEO, authorises the sub delegation of the delegated power or functions, unless the Council directs otherwise, and if made to anyone else, authorises the sub delegation of the delegated power or function only with the approval of the Council; and
 - 4.3.3 is revocable at will and does not prevent the Council from acting in relation to a delegated function or power.
- 4.4. All delegations to the CEO extend to any person appointed to act in that Office.
- 4.5. Where a delegation is made by the Council to an officer or employee, other than the CEO, the resolution will, unless otherwise required by statute, identify the delegate by reference to the office or position held, rather than by the name.
- 4.6. In the event that a power or function is delegated to an employee of the Council, the employee is responsible to the CEO for the efficient and effective exercise or performance of that power or function.
- 4.7. Any conditions or limitations applying to a delegation (or sub delegation) are to be specified in the Instrument of Delegation (or Sub Delegation).
- 4.8. For the avoidance of doubt, despite delegating any function or power, the Council retains the discretion to exercise its original power or function. However, caution will be exercised in this regard, particularly in relation to matters where a delegate has exercised the delegated power or function.

5. Responsibilities

- 5.1. The CEO (or their delegate) must:
 - 5.1.1. Prepare all Instruments of Delegation (and Sub Delegation), in consultation with key stakeholders;
 - 5.1.2. ensure that any conditions or limitations applying to a sub delegation are specified in the Instrument of Sub Delegation
 - 5.1.3. ensure that employees in roles with delegated authority possess the relevant knowledge and skills to adequately exercise the delegated powers or functions assigned to that position;
 - 5.1.4. ensure delegated power or function, including any conditions and limitations, are for the responsibilities and level of the position to which the powers or functions have been delegated;

- 5.1.5. ensure relevant employees are, in an ongoing manner, kept aware of legislative amendments that will necessitate amendments to the Council's delegations;
 - 5.1.6. have regard to the powers and functions that may not be delegated pursuant to sections 44(3) and (3a) of the Act;
 - 5.1.7. facilitate all required amendments to delegations when the duties or functions of positions within the organisation change;
 - 5.1.8. maintain the Delegations Register pursuant to section 44(7) of the Act;
 - 5.1.9. manage and coordinate the review of the Delegations Register, as required by section 44(6a) of the Act; and
 - 5.1.10. provide ongoing advice and guidance to employees in relation to delegated authority.
- 5.2. Employees who have been delegated powers or functions must:
- 5.2.1. only exercise the delegations that have been applied against the position they currently occupy;
 - 5.2.2. take steps to ensure they understand the powers and functions that have been delegated to them;
 - 5.2.3. comply with all relevant statutory requirements of the delegation, and act within the scope of the delegation they have been conferred;
 - 5.2.4. comply with Council policies in the exercise of any delegated power or function;
 - 5.2.5. Maintain appropriate records of any decision or action taken in furtherance of a delegation;
 - 5.2.6. comply with any limitations or conditions placed on the delegation; and
 - 5.2.7. be accountable for any delegated power or function they exercise. In doing so, employees will be supported to ensure that they have the necessary skills, competency and qualifications (if required) to undertake their duties.

6. Conflict of Interest

- 6.1. An employee must not exercise a delegated power or function that would give rise to a conflict of interest for them under section 120 of the Act, without first having disclosed that interest to the CEO and obtaining authorisation from the CEO to so Act.
- 6.2. A person is not required to exercise a delegated power or function where, in their considered opinion, circumstances exist that would make it more appropriate for the matter to be dealt with by another delegate. In these circumstances, the delegate must refer to their immediate senior in the line of accountability.

- 6.3. Any inappropriate exercise of a delegated power or function by an employee may constitute misconduct, resulting in disciplinary action.

7. Varying/Revoking Delegations

- 7.1. The Council may at any time resolve to vary or revoke a delegation.
- 7.2. The CEO may at any time determine to vary or revoke a sub delegation.
- 7.3. Any amendments to an employee's delegated authority (including the CEO's) are to be reflected in the Delegations Register as soon as reasonably practicable.

8. Availability of Policy

- 8.1. This Policy is available for inspection at the Council offices during ordinary business hours at 9:00am to 5:00pm weekdays.
- 8.2. A copy of the Policy 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.
- 8.3. The Policy is also available to download via the Council's website www.berribarmera.sa.gov.au

9. Review

- 9.1. The Delegations Register will be reviewed in accordance with section 44(6a) of the Act.
- 9.2. This Policy will be reviewed every three (3) years, or as required as a consequence of legislative change or in accordance with a resolution of the Council.

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