


DISTRICT COUNCIL OF LOWER EYRE PENINSULA

Mayor / Chairperson Seeking Legal Advice



“Working with our Rural & Coastal Communities”

	LP-POL-01 – MAYOR / CHAIRPERSON SEEKING LEGAL ADVICE	Version No:	1.2
		Issued:	April 2019
		Next Review:	March 2019

Responsibility:	Governance
Minutes reference:	C122 (2)
Applicable Legislation:	<i>Local Government Act 1999, Freedom of Information Act 1991 State Records Act 1997</i>
Related Policies/Procedures/Codes:	Nil.
Review Frequency:	Following Local Government Elections

1. INTRODUCTION

As a general rule, any legal advice obtained on behalf of a Council will be directly sought by the Chief Executive Officer, 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. However, there may be limited circumstances where it is not appropriate, or not possible for a Council to obtain legal advice through the CEO or delegate.

2. PURPOSE OF THE POLICY

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

3. CIRCUMSTANCES IN WHICH IT IS APPROPRIATE FOR THE MAYOR / CHAIRPERSON TO SEEK LEGAL ADVICE

In circumstances in which it is not possible or appropriate for the CEO to seek legal advice, the Mayor / Chairperson should, ideally, seek a Council resolution to obtain legal advice. However, where this is not possible, the Mayor / Chairperson may seek the advice independently as set out below.


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

Where legal advice is urgently required in the absence of the CEO: -

- The Mayor/Chairperson may seek the legal advice, including for an imminent Council meeting or other urgent matter;
- 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*); and
- The legal advice will also be provided to the CEO (unless this is not appropriate – see 3.2).

(continued):

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3. Circumstances in which it is Appropriate for the Mayor / Chairperson to Seek Legal Advice cont'd:

3.2 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/Chairperson 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/Chairperson to ensure the legality of the Council's actions and decisions;
- The Mayor/Chairperson will not confer with Council staff where the legal advice relates to the CEO's employment or other personal matter;
- The Mayor/Chairperson may confer with other relevant senior Council staff, such as an Acting CEO, if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest issue relating to matters disclosed in the register of interests;
- The Mayor/Chairperson will keep the Council fully informed of any advice obtained on behalf of the Council in these circumstances and advise members of the advice received at the next available meeting;

Where the Mayor/Chairperson has obtained the advice other than in accordance with a Council resolution Council should, as a matter of caution, retrospectively endorse the Mayor's/Chairperson's decision to obtain the advice.

4. RECORD KEEPING AND CONFIDENTIAL DOCUMENTS

Where the Mayor/Chairperson 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.

A locked filing cabinet of the Mayor is stored securely at the Principal office of the 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*. Records may also be stored electronically in Council's records management system and where required, have file restrictions placed upon them to exclude access by the CEO.

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5. AVAILABILITY

Copies of this policy may be purchased for the fees outlined within Council’s current Schedule of Fees & Charges. This policy is available for inspection at the Council offices during ordinary business hours or on Council’s website (www.lowereyrepeninsula.sa.gov.au) at no cost.

SIGNED: 

CEO

Date: 18 / 04 / 2019



Mayor, DCLEP

Date: 18 / 04 / 2019

DOCUMENT HISTORY		
Version:	Issue Date:	Description of Change:
V1.1		
V1.2	18/4/19	Inclusion of reference to Electronic Records System.
V1.2	18/04/2019	Adopted by Council (following Council Election)