

## Delegation of Powers and Appointment of Authorised Persons

### [Version Information](#)

### Scope

This guideline applies across Council and is applicable to the Mayor, Councillors, a Standing Committee, the Chairperson of a Standing Committee, the Chief Executive Officer and all Council employees and contractors.

### Purpose

The purpose of this guideline is to ensure Council meets its legislative delegation and authorisation requirements under the *Local Government Act 2009*, in the most effective and efficient way possible.

### Definitions

<b>Administrative Authorisations:</b>	An authorisation from the Chief Executive Officer.
<b>Administrative Authorised Officer:</b>	An employee or contractor duly appointed to an administratively authorised office.
<b>Delegate:</b>	(a) The action of delegating power; or (b) The individual to whom a power is devolved.
<b>Delegation:</b>	The legal process or result thereof of the delegation of powers under a local government act.
<b>Delegations Register:</b>	A register of delegations that contains the particulars prescribed under a regulation. The public may inspect the register of delegations.
<b>Employee:</b>	(a) the Chief Executive Officer; or (b) a person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
<b>Instrument of Appointment:</b>	The document that appoints the authorised person pursuant to a local government act and provides the powers the enforcement officer may exercise as a Statutory Authorised Person, including reference to that officer's statutory defined rights of enforcement.
<b>Instrument of Delegation:</b>	A formal document issued by the CEO and maintained in a register that delegates the right to exercise the legislatively prescribed powers of Council or the Chief Executive Officer to a Specified Office of Council pursuant to Chapter 7 Part 5 of the <i>Local Government Act 2009</i> .

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#### CMR Team use only

**Local Government Act:**

Means a law under which a local government performs the local government's responsibilities, including for example—

- (a) the *Local Government Act 2009*; and
- (b) a local law; and
- (c) the Planning Act; and
- (d) a planning scheme; and
- (e) the Plumbing and Drainage Act; and
- (f) the *Water Act 2000*; and
- (g) the *Water Supply (Safety and Reliability) Act 2008*.

(Schedule 4 – Dictionary, *Local Government Act 2009*)

**Statutory Authorisation:**

The appointment of a “Statutory Authorised Person” which enables a Statutory Authorised Person to exercise a statutory defined right of enforcement.

**Statutory Authorised Person:**

A person (an enforcement officer) who:

- (a) is appointed under the *Local Government Act 2009* or other Local Government Act as an authorised person; and
- (b) by their appointment, is empowered to exercise specific powers provided in the Local Government Act.

## Actions and Responsibilities

### Delegation of Power by Council or the Chief Executive Officer

1. Pertinent powers in the “Local Government Act” are delegable by Council resolution to:

- the Mayor; or
- the Chief Executive Officer; or
- a standing committee; or
- the chairperson of a standing committee; or
- a Councillor, for the purpose of exercising a power as a shareholder in relation to a corporate entity.

However, Council must not delegate a power that an Act states must be exercised by resolution.

2. The Mayor may delegate the Mayor's powers to another Councillor of Council. However, the Mayor must not delegate the power to give directions to the Chief Executive Officer.

3. The Chief Executive Officer may delegate the Chief Executive Officer's powers to an appropriately qualified employee or contractor of Council. However, the Chief Executive Officer must not delegate:

- a power delegated by the local government, if the local government has directed the Chief Executive Officer not to further delegate the power;
- a power to keep a register of interests; and
- the power to sign a drafting certificate for a local law.

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4. The Chief Executive Officer must establish a register of delegations that contains the particulars prescribed under a regulation. The Chief Executive Officer must record all delegations by the Council, Mayor or the Chief Executive Officer in the register of delegations. The public may inspect the register of delegations.
5. Under s.257(4) of the *Local Government Act 2009*, a delegation from the local government to the Chief Executive Officer must be reviewed annually.
6. While power delegated by the Chief Executive Officer pursuant to the provisions of the *Local Government Act 2009* can be exercised in favour of either an employee or contractor specified by name or the holder of a Specified Office by reference to the Specified Office concerned (Section 27A *Acts Interpretation Act 1954*), the delegation of power is to be made to a Specified Office in terms of delegating the Chief Executive Officer's powers, i.e. delegations are to the position and not the person.
7. A power delegated is exercisable when the Specified Office to which the power has been delegated is occupied by a Council employee formally appointed to that Specified Office, for the period of time the employee is appointed to the Specified Office, i.e. a person officially relieving in a position with delegations automatically assumes those delegations.
8. Delegates or officers other than the Chief Executive Officer, cannot sub-delegate or on-delegate any power delegated. A delegate may appoint a person or group, such as a committee, to advise about the exercise of a delegation but the delegate remains responsible for making the decision (*Acts Interpretation Act 1954*).
9. Delegates have the responsibility of making decisions on behalf of the Council. That means that decisions may be subject to appeal or enquiry as to inappropriate administrative procedures. Delegates are therefore expected to exercise their responsibility in accordance with the provisions of the law as it would have applied to Council were it making the decision.
10. In making decisions, delegates should make themselves aware of any specific Council policies, decisions, local laws, statutory provisions, information etc. that may be relevant to the proposal. This is a key responsibility that forms an integral part of the delegation.
11. The delegation does not derogate from the power of Council to act in any matter itself. Accordingly, decisions that appear to the delegate to be of particular public interest, sensitivity, or special importance should be referred to more senior management or the Council for determination. The exercise of this judgement should be such that decisions should be referred if the delegate has any doubts about the interest in or significance of the proposal.
12. A delegated power may be exercised only in accordance with any conditions to which the delegation is subject.
13. Subject to any exemptions to delegations hereof,
  - where a power to decide or approve an application is delegated, the delegation includes the power to, where appropriate:
    - approve the application,
    - approve the application, subject to reasonable and relevant conditions, or
    - refuse the application.
  - where a power to do a thing is delegated, the delegation includes the power not to do it; and

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- where a power is to grant, issue or approve a thing, this includes where appropriate, the power to suspend or repeal it.

14. The power to contract is delegable pursuant to the delegation process subject to the exercise of the power being constrained by the provisions of:

- *Local Government Act 2009* and
- Council's Purchasing Policy and Guidelines

(It is beneficial to think of the power to contract as something that impacts upon a particular legal right of a person other than Council or the Chief Executive Officer, e.g. entry into a contract is a power that binds Council and a third party to the relevant legal obligations under that contract.)

### Exemption to delegations

1. A power that, in an Act or statutory instrument, is required to be exercised by resolution of Council, may not be delegated by Council. Such powers are expressly exempted from being delegated.

### Power to Appoint a Statutory Authorised Person

1. Where legislation requires that a Statutory Authorised Person is to be appointed by Council, Council's power to appoint a Statutory Authorised Person pursuant to the Local Government Act is delegable by Council resolution to the Chief Executive Officer pursuant to the delegation process.
2. The Chief Executive Officer or a Specified Officer to whom the Chief Executive Officer has delegated the power, exercises a discretion in their own right in the appointment of Statutory Authorised Persons.
3. The Local Government Act utilises this delegation process for the purposes of appointing Statutory Authorised Officers to exercise the defined rights of enforcement, acting reasonably in reliance on relevant information, provided in the relevant legislation. The power to appoint a Statutory Authorised Person is delegable but the appointee is unable to on-delegate his/her appointment, i.e. a person officially relieving in a position does not automatically assume the authorisations of the person who normally holds that position.
4. An employee or contractor appointed as a Statutory Authorised Person does not exercise a discretion in their own right, but rather exercises the statutory defined rights of enforcement outlined in the relevant legislation.

(e.g. an Environmental Health Officer may be appointed as a Statutory Authorised Person under the legislation below listed:

- *Public Health Act 2005*
- *Dangerous Goods Safety Management Act 2001*
- *Environmental Protection Act 1994*
- *Food Act 2006*
- *Public Health (Infection Control for Personal Appearance Services) Act 2003*

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- *Local Law No 7 (Camping Grounds)*
- *Local Law No 8 (Swimming Pools)*
- *Local Law No 9 (Entertainment Venues)*
- *Local Law No 12 (Rental Accommodation with Shared Facilities)*
- *Local Law No 17 (Caravan Parks)*
- *Local Law No 20 (Commercial Use of Roads)*

## Administrative Authorisation

1. Under the provisions of the *Local Government Act 2009*, the Chief Executive Officer has a number of roles including establishing and implementing goals and practices in accordance with the policies and priorities of Council and the day-to-day management of Redland City Council's affairs. Administrative authorisations are an authorisation from the Chief Executive Officer to a Council Officer, pursuant to Section 13 of the *Local Government Act 2009*.

(For example, the signing of correspondence is not a delegated power nor is it the exercise of a Statutory Authorisation. Authority to sign correspondence emanates from Section 13 of the *Local Government Act 2009* and is an Administrative Authorisation from the Chief Executive Officer, i.e. carrying out such a function equates to the performance of an administrative act which will not usually impact upon legal rights.)

2. The signing of correspondence by a Council Officer must not involve a delegation inappropriately, e.g. a person signing a letter must not purport to bind the Council to a contract unless that person occupies the Office that has the appropriate delegated power to do so.
3. Where Council has resolved to make, vary or discharge a contract, an officer occupying an Office authorised by the Chief Executive Officer may execute requisitions or any other transactional or administrative requirement or documentation to make, vary or discharge the contract consistent with the resolution of Council and pursuant to Section 13 of the *Local Government Act 2009*.
4. An Officer executing a purchase or requisition order who does not occupy the Specified Office holding the delegated power to do so is acting in his own right as an Administrative Authorised Officer ultimately responsible to the Specified Office that does have the delegated power to contract in relation to the matter.

## Governance Procedures for Delegations and Statutory and Administrative Authorisations

1. Individual Group Managers are responsible for ensuring;
  - That an employee's delegations and a Statutory Authorised Person's authorisations are linked to the requirements of their position description.
  - They maintain a schedule of all necessary delegations and statutory and/or administrative authorisations for positions under their supervision
  - Officers under their supervision hold the delegations and statutory and/or administrative authorisations to legally discharge their responsibilities

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- An officer holding a delegation, statutory and/or administrative authorisation has the requisite expertise/experience and has received the necessary training to hold and competently exercise the delegation, statutory authorisation or administrative authorisation.
- The currency of an officer's credentials to hold and exercise a delegation, statutory and/or administrative authorisation and any requirement for ongoing training.
- Actions, reports, decisions, procedures and other documents properly consider the delegations, statutory authorisations and administrative authorisations of individual officers/offices.

(Where a delegation is required to implement a decision or policy of Council, the Manager is responsible for following the process outlined herein to check whether a suitable delegation exists and to have such delegation put in place, where required).

- Changes to Group structures affecting position profiles are communicated to the Corporate Meetings and Registers Team to ensure corporate registers are appropriately maintained.
- A delegation ceases to exist if a position number/position description changes and a new instrument will need to be approved.
- Biennial reviews of the delegations and statutory and/or administrative authorisations held by officers under their supervision are undertaken to ensure currency.

## Corporate Registers

1. The Delegations Register is maintained by the Corporate Meetings and Registers Team. This database should be used to review or check existing delegations. The register contains details of the CEO's delegations including powers of the Council which have been delegated to the CEO by Council resolution as well as powers delegated directly to the CEO by individual legislative instruments. The register also contains details of delegations from the CEO to a Specified Office.
2. In accordance with s305 of the *Local Government Regulation 2012* the delegations register must contain:
  - a) the name or title of the person, or the name of the committee, to whom powers are delegated; and
  - b) a description of the powers delegated, including the provisions under a Local Government Act permitting or requiring the exercise of the powers; and
  - c) if the delegation was by the local government—a summary of the resolution by which powers are delegated, including—
    - i. the date of the resolution; and
    - ii. a summary of any conditions to which the delegation is subject; and
    - iii. if the resolution is numbered—its number.

The chief executive officer may include any other information in the register the chief executive officer considers appropriate.

3. The Delegations Register also lists officers who are appointed as Authorised Persons, the legislation they are authorised under and the powers they are authorised to exercise.

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4. Administrative authorisations are maintained at the Group level by individual Group Managers who must ensure that staff operating under their supervision have the adequate level of administrative authorisation to efficiently and effectively perform their roles.

### Policy and Guideline Review Processes

1. This Guideline and the associated Policy (POL-3098) will be reviewed every three years by the Manager Corporate Governance to ensure ongoing adequacy and compliance with relevant legislation. The review process will include adequate consultation with Group Managers across the organisation.
2. The Internal Audit Group will conduct regular reviews to ensure this Guideline is being properly implemented across the organisation.

### Reference Documents

This Guideline has been developed to support the application or administration of:

- POL-3098 Delegation of powers and appointment of authorised persons
- PR-3098-001-001 Statutory and Financial Delegations
- *Local Government Act 2009*
- A Local Law

### Associated Documents

POL-3403 Corporate Purchasing Policy  
GL-3043-001 Purchasing Goods and Services for Council Guideline

### Document Control

- Only the General Manager Organisational Services can approve amendments to this guideline. Please forward any requests to change the content of this document to the Manager Corporate Governance.
- Approved amended documents must be submitted to the Corporate Meetings and Registers Team for placement on the Policy, Guidelines and the Procedures Register.

### Version Information

Version No.	Date	Key Changes
2	January 2014	<ul style="list-style-type: none"><li>• Administrative updates in line with <i>Local Government Act 2009</i> amendments;</li><li>• Change in title.</li></ul>

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#### CMR Team use only

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