

MAYOR OBTAINING LEGAL ADVICE POLICY	
	Council Policy
TRIM Reference	AR18/46377[v2]
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Next Review	October 2027

1. POLICY STATEMENT

Legal advice obtained on behalf of Council will be authorised by the Chief Executive Officer or a Council resolution. The Chief Executive Officer is responsible for the implementation of lawful Council decisions and for the overall administration and budget management of Council. However, there may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the Chief Executive Officer.

2. PURPOSE

2.1 Purpose

This policy defines the circumstances in which the Mayor is authorised to seek legal advice independently of the Chief Executive Officer.

2.2 Scope

This policy applies to the Council (Elected Members) and Council staff.

2.3 Strategic Reference

5 Governance and Financial Sustainability

5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

3. PRINCIPLES

3.1 Circumstances in which it is appropriate for the Mayor to Seek Legal Advice

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

3.2 Urgent matters relating to a Council Meeting if the Chief Executive Officer is unavailable.

While the Chief Executive Officer and Director City Services has a good working knowledge of Council meeting procedures, matters may arise from time to time which require an urgent legal opinion.

3.2.1 Where legal advice is required in the absence of the Chief Executive Officer the Mayor may seek legal advice in situations in which a response is required urgently, including for an imminent Council meeting or other urgent matter.

3.2.2 On each occasion that legal advice is obtained by the Mayor, it will be reported to the Council at the earliest available meeting.

3.2.3 On each occasion that legal advice is obtained by the Mayor, it will also be provided to the Chief Executive Officer (unless this is not appropriate under clause 3.3).

3.3 Legal advice relates to the Chief Executive Officer or the exercise of the Chief Executive Officer's powers.

In circumstances where Council is to consider a matter related to the Chief Executive Officer and it is the view of the Mayor that the consideration of this matter by the Council should occur with the benefit of legal advice:

- 3.3.1 The advice will be obtained as a matter of administrative necessity by the Mayor to ensure the legality of the Council's actions and decisions.
- 3.3.2 The Mayor will not confer with Council staff where the legal advice relates to the Chief Executive Officer's employment or other personal matter.
- 3.3.3 The Mayor may confer with other relevant senior Council staff, if the matter concerns an issue that is not confidential to the Chief Executive Officer, such as a conflict of interest matter relating matters disclosed in the register of interests.
- 3.3.4 The Mayor will keep the Council fully informed of any advice obtained on behalf of the Council and advise members of the advice received at the next available meeting.
- 3.3.5 Where the Mayor has obtained the advice other than in accordance with a Council resolution Council should, as a matter of caution, retrospectively endorse the Mayor's decision to obtain the advice.

3.4 Record Keeping and Confidential Documents

- 3.4.1 Legal advice obtained by the Mayor, may be reported to Council 'in confidence' under Section 90(3)(h) of the *Local Government Act 1999*.
- 3.2.1 Where the Mayor obtains legal advice relating to the Chief Executive Officer or the exercise of the Chief Executive Officer's powers, and it is not appropriate to provide that advice to the Chief Executive Officer, the advice must be placed in the records management system in such a way as to ensure that it cannot be accessed by the Chief Executive Officer. This procedure will also apply to other documents relevant to the matter which, in the opinion of the Council, should be kept confidential.
- 3.2.2 The documents will have restricted access within the records management system, limited to the Mayor and the Acting Chief Executive Officer. 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*.

4. RESPONSIBILITY & REVIEW

4.1 Responsible Officer

Chief Executive Officer

4.2 Availability

This policy will be available on Council's website.

4.3 Review

This policy will be reviewed within 12 months of a General Election for Local Government, or as required to meet other obligations.

5. REFERENCES

5.1 Legislation

Local Government Act 1999
State Records Act 1997