



## DISTRICT COUNCIL OF LOXTON WAIKERIE

### Policy for Mayor Seeking Legal Advice

<b>Policy Identification:</b>	
Policy type:	Council
Summary	This policy is designed to set out Council's position in relation to the circumstances in which the Mayor is authorised to seek legal advice independently of the Chief Executive Officer
Record number:	15.63.1
Date of adoption or approval:	15 July 2011
Last review date:	21 October 2016
Next review date:	2018 Every 4 years, including within 6 months following a council election and reviewed after the any advice has been sought under this policy
Authorised by:	Council
Responsible department:	Corporate and Community Services
Responsible officer:	Director Corporate and Community Services
Review officer:	Governance Officer
Consultation required:	
Relevant references:	
Delegations:	
Legislation:	Local Government Act 1999, 58(1)(d), 90(3)(h)
Related policies:	
Related procedures:	Local Government (Procedures at meetings) Regulations 2013

#### 1. Purpose of the Policy

This policy is designed to set out Council's position in relation to the circumstances in which the Mayor is authorised to seek legal advice independently of the Chief Executive Officer

#### 2. Strategic reference

*Leadership and engagement: strategy 4.2.1; implement a transparent, accountable and consistent decision making process.*

#### 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 should, ideally, 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.

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

While the CEO and Governance Officer have a good working knowledge of Council meeting procedures, matters may arise from time to time which require an urgent legal opinion. Where legal advice is required in the absence of the CEO:

- The Mayor/Chairperson may seek legal advice in situations in which a response is required urgently, 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*);
- The legal advice will also be provided to the CEO (unless this is not appropriate – see below).

### **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 to ensure the legality of the Council's actions and decisions;

The Mayor will not confer with Council staff where the legal advice relates to the CEO's employment or other personal matter;

- The Mayor may confer with other relevant senior Council staff, such as the Director Corporate & Community Services, if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest matter relating matters disclosed in the register of interests;
- 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;
- 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.

#### 4. Record Keeping and Confidential Documents

Where the Mayor 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.

Council will keep confidential documents off-site with a reputable and trustworthy custodian. In the case of documents that are to be kept confidential from the CEO, the relevant documents will be kept off-site until the requirement for confidentiality ceases.

Council will store any such items in a Safe Custody Envelope at BankSA, the Mayor and a Director will be required to establish an account with both acting as signatories to the account and with joint access to the envelop.

The chosen custodian of the documents must agree to ensure the maintenance of the documents' integrity and ensure that the documents are readily identifiable and accessible to allow their assessment as part of an application made under the Freedom of Information Act.

#### 5. Availability of the Policy

This Policy will be available for inspection at the Council Offices at Loxton or Waikerie during ordinary business hours at no charge.

Copies of this Policy will also be available from Councils website [www.loxtonwaikerie.sa.gov.au](http://www.loxtonwaikerie.sa.gov.au) or postal copies may be obtained from the Council Office free of charge.

#### 6. Document history and version control

Date	Version	Authorisation: Council/ Committee/ Senior Management Team	Document history
21/10/16	1.1	Council, at the ordinary meeting of 21 October 2016 (Item 8.6)	This review notes updated legislative reference, amended strategic referenced, review period and advice as to fees charged.