

1 Objective

To determine the City's approach to structuring statutory delegations of authority, authorisations and the concept of "acting through", in order to maximise operational effectiveness and efficiency.

2 Policy Statement

2.1 INTRODUCTION TO STATUTORY DELEGATIONS, AUTHORISATIONS AND ACTING THROUGH

"Delegations" and "authorisations" are the statutory framework by which power can be devolved to appropriate levels within the City in order to fulfil statutory functions and duties in the most effective and efficient manner.

A "delegation" confers the ability to exercise a statutory power or duty to a person or body nominated by a person or body that is vested with the responsibility to exercise that power or duty.

An "authorisation" is the designation of an individual officer as a person that is capable of exercising a specific statutory power or duty.

The local government statutory regime also provides for the Council and CEO to "act through" other officers, agents and bodies to achieve statutory functions.

2.2 GOVERNANCE STRUCTURE

The Local Government Act 1995 provides that the Council appoints a CEO and the CEO appoints employees. Similarly, all local government employees are responsible to the CEO who in turn is responsible to the Council.

Wherever possible, the City of Swan will endeavour to ensure authorisations and delegations conform to this governance structure. Accordingly, delegations will be established from the Council to the CEO and this will enable the CEO to delegate power to officers as the CEO sees fit.

Delegations and authorisations from the Council directly to officers other than the CEO will be avoided unless legislation specifically provides that this is the only manner in which the power can be provided to an officer other than the CEO.

2.3 DELEGATIONS

2.3.1 The Interpretation Act 1984

The statutory framework for delegated authority is established in the Interpretation Act 1984, and requires the following two matters to be identified from within a piece of legislation:

- i. the power to delegate; and,
- ii. the power being delegated.

Specifically, s58 and s59 of the *Interpretation Act 1984* establish respectively, the exercise of the power to delegate and the exercise of delegated power. These sections apply to all delegations under any written Western Australian law however they may be varied by the statute which provides the power of delegation.

"58. Delegates, performance of functions by

Where under a written law the performance of a function by a person is dependent upon the opinion, belief, or state of mind of that person in relation to a matter and that function has been delegated under a written law, the function may be performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

59. Power to delegate, construction of

- (1) *Where a written law confers power upon a person to delegate the exercise of any power or the performance of any duty conferred or imposed upon him under a written law —*
 - (a) *such a delegation shall not preclude a person so delegating from exercising or performing at any time a power or duty so delegated;*
 - (b) *such a delegation may be made subject to such conditions, qualifications, limitations or exceptions as the person so delegating may specify;*
 - (c) *if the delegation may be made only with the approval of some person, such delegation, and any amendment of the delegation, may be made subject to such conditions, qualifications, limitations or exceptions as the person whose approval is required may specify;*
 - (d) *such a delegation may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of office;*
 - (e) *such a delegation may be amended or revoked by instrument in writing signed by the person so delegating;*
 - (f) *in the case of a power conferred upon a person by reference to the term designating an office, such a delegation shall not cease to have effect by reason only of a change in the person lawfully acting in or performing the functions of that office.*
- (2) *The delegation of a power shall be deemed to include the delegation of any duty incidental thereto or connected therewith and the delegation of a duty shall be deemed to include the delegation of any power incidental thereto or connected therewith.*
- (3) *Where under a written law an act or thing may or is required to be done to, by reference to or in relation to, a person and that person has under a written law delegated a relevant function conferred or imposed on him with respect to or in consequence of the doing of that act or thing, the act or thing shall be regarded as effectually done if done to, by reference to or in relation to the person to whom the function has been delegated."*

2.3.2 The Power to Delegate

The ability to delegate a statutory power must be provided expressly by legislation. This is known as the power of delegation. This is the first requirement for an effective delegation. The following powers of delegation are contained in legislation relevant to local government.

Power to Delegate					
Legislative Power to Delegate		Delegation From	Delegation To	Function	Statutory Limitations / Conditions on Delegation of Authority
Local Government Act 1995	s5.16	Council	Committees	Powers and duties of Council under the Local Government Act	s5.17
Local Government Act 1995	s5.42	Council	CEO	Powers and duties of the Council under the Local Government Act	s5.43
Local Government Act 1995	s5.44	CEO	Any employee of the local government	Powers and duties of the CEO under the Local Government Act	s5.44
Bush Fires Act 1954	s48	Council	CEO	Powers and duties of the Council under the Bush Fires Act	s48
Local Government (Miscellaneous Provisions) Act 1960	s374(1b)	Council	Building Surveyor	Power to approve or refuse to approve plans and specifications	s374
Town Planning Scheme 17	cl.11.3	Council	Officers of the local government.	Delegation of Functions	cl.11.3.4
Strata Titles Act 1985	s23(4)	Council	Any employee of the local government	Functions of the local government under the Strata Titles Act	s23 <i>Note: delegation must be under the common seal.</i>
Western Australian Planning Commission Act 1985	s19A	Minister	Any person or body	Functions of the Minister to give or decline approval under the WAPC Act	
Western Australian Planning Commission Act 1985	s20	WAPC	Any eligible person or body	Functions of the WAPC under the WAPC Act	s20

2.3.3 Conditions / Limitations on Delegation

Each power of delegation may be subject to statutory conditions / limitations and relevant references are outlined in the above table.

The power of delegation may also provide for the Delegator to apply further conditions / limitations to a delegation. These conditions and limitations must be recorded in the instrument of delegation, which is the written conferral of the delegated authority.

It is important to note that the statutory power being delegated may be subject to statutory conditions or limitation within the legislation.

This policy establishes conditions applicable to all City of Swan statutory delegations and sub-delegations.

2.3.4 The Power Being Delegated

The second requirement for an effective delegation is the existence of a power to be delegated.

The City's instrument of delegation shall specify the statutory power or duty being delegated, with or without subsequently incurred limitations /conditions, to ensure that the person exercising delegated authority can be certain of the extent of authority conferred by the delegation.

The legislation under which the City may delegate its powers is outlined in the table shown at cl.2.3.2.

2.3.5 Local Government Act Register of Delegations

The Local Government Act 1995 [s5.17 and s5.46(1)] requires the City to maintain a register of delegations of authority. This register includes the instrument of delegation, relevant to each delegated authority.

The Register is required to be available for public inspection [Local Government (Administration) Regulations 1996 reg.29(1)(b)].

2.3.6 Delegates

The City confers delegated authority on specified offices. A person must be appointed in writing to the class of office specified within the instrument of delegated authority in order to exercise the delegated power.

The exercise of a power by a delegate is, for the purposes of the Act under which the power is delegated, deemed to be exercised by the person or body who delegated the power. However, in making a determination through the exercise of delegated authority, the delegate does so based upon their own opinion, belief or state of mind in relation to that matter.

Decisions relating to the matter delegated shall be made by the person nominated in the delegation. It is however, understood that other staff may carry out administrative and technical work in support of those decisions.

Delegates shall ensure compliance with all relevant legislative requirements, Local Laws, Council Policies, resolutions of Council, processes and procedures.

Delegated authority cannot be exercised where the delegate has, or would reasonably be seen to have, a financial interest or interest affecting impartiality in relation to that matter.

Delegates shall ensure that, during periods of extended leave, there is effective establishment of persons acting within their specified office to support continuity of the City's functions occurring under delegated authority.

2.3.7 Delegate Record Keeping Responsibilities

Delegates shall ensure that determinations made through the exercise of delegated authority are evidenced within the City's Corporate Record Keeping systems, in accordance with the statutory requirements for delegate records [Local Government Act 1995 s5.46(3)] and Policy 'Pol-C-055 Record Management'.

The following are the record keeping responsibilities for City of Swan delegates:

- a. Ensure evidentiary records of each decision are retained in the City's Corporate Record Keeping Systems. The format of these records is outlined in the requirements of Local Government (Administration) Regulations 1996 Reg.19 'Records to be kept by Delegates'.
- b. The record must be created and described in a manner that will allow the City to identify the decisions made by each delegate under each relevant delegation of authority. As a minimum, the record shall include:
 - o Date the decision was exercised;
 - o Position Title of the Officer or the Committee exercising the decision;
 - o Description of how the power was exercised, including where appropriate, any directions to staff to carry out work associated with the decision unless those directions are included in Policies, Processes, Procedures or the City of Swan Delegation of Authority Register;
 - o Identification of the people or class of people directly affected by the decision (other than Council, Committee members or employees of the City); and,
 - o The Delegated Authority reference number, as it appears in the City of Swan Delegation of Authority Register.
- c. Where the making the decision does not create a corporate record that will sufficiently evidence a decision in accordance with these requirements, the delegate is required to record the decision in the City's Delegation of Authority Record Template.

2.4 AUTHORISATIONS

The Local Government Act 1995, the City's Local Laws and a range of other legislation prescribes circumstances where the functions and duties of the local government may only be fulfilled by persons authorised for the purpose of fulfilling that specific statutory function or duty.

2.4.1 Authorised Persons / Officers

The City will appoint individual officers as Authorised Persons to perform specified statutory functions or duties. Appointments shall occur in writing and where required by the relevant statute, in the prescribed form. Authorisation is conferred directly to a person by name, and is not transferable by right of office. The City maintains a Register of Authorised Persons.

The Authorised Person, exercises a statutory function or duty, does so in their own right and must form their own opinion, belief or state of mind in relation to that matter.

Authorised Officers shall ensure that determinations made through the exercise of the function or duty for which they are authorised, are effectively evidenced within the City's Corporate Record Keeping systems, in accordance Policy 'Pol-C-055 Record Management'.

2.5 ACTING THROUGH

The Local Government Act 1995 does not specifically define the meaning of the term "acting through", however, s5.45(2) states:

"Nothing in this Division is to be read as preventing -

- (a) a local government from performing any of its functions by acting through a person other than the CEO; or*
- (b) a CEO from performing any of his or her functions by acting through another person."*

The Department of Local Government & Regional Development Guideline No.17 - Delegations (c2007) establishes the principal issue in determining whether a statutory function or duty is suitable for 'acting through' is that where the statute provides no discretion in carrying out a function or duty, then that function or duty may be undertaken through the "acting through" concept.

Conversely, where the statute allows for discretion on the part of the decision maker, then that function must be:

- Delegated; or,
 - where applicable a person authorised; or,
 - a policy implemented that provides sufficient control,
- for another person to have that authority and fulfil the function or duty.

Where considered appropriate and effective in operation, discretionary matters will be determined by Council through policy. The policy decision may then be implemented by officers through the 'acting through' concept. In these instances there is no need for a delegated authority as it is responsibility of the CEO [Local Government Act 1995 s5.41(c)] to implement the City's policies.

Governance References

Statutory Compliance	Interpretations Act 1984 Local Government Act 1995
Industry Compliance	Department of Local Government and Regional Development Guideline No.17 Delegations.
Organisational Compliance	City of Swan Delegation of Authority Register
Decision Maker	Council
Process Links	

Policy Administration

Business Unit Name	Officer Title	Contact:
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1.	OCM 02/07/08	New policy to define and support statutory delegations, authorisations and the concept of acting through.
2.		