

1 PURPOSE

The purpose of this policy is to establish a framework for delegating (and further delegating) powers, functions and duties vested in the Council and its officers.

This Policy is in accordance with Section 40 and Section 168 of the *Local Government Act 2019 (the Act)*, which makes provision for the delegation of powers and functions from Council and from the Chief Executive Officer.

2 SCOPE

This Policy applies to Council, Council Committees or any other authority, subsidiary, body or board established under the Act, the Chief Executive Officer (CEO) and any other council staff having been delegated or sub-delegated a power, function or duty vested in the Council.

3 POLICY STATEMENT

3.1 LEGISLATIVE FRAMEWORK

Section 40 of the Act provides that a Council may delegate powers and functions to:

- a) the Chief Executive Officer; or
- b) a council committee; or
- c) a local authority; or
- d) a local government subsidiary

However, under Section 40(3) and 40(4) of the Act:

- a) the power to impose rates cannot be delegated; and
- b) if the power to incur financial liabilities is delegated, the council must fix reasonable limits of the delegate's authority; and
- c) a delegation cannot duplicate or derogate from the Chief Executive Officer's functions as outlined in the Act; and
- d) the power to make a decision that requires a council resolution cannot be delegated; and
- e) the power to enter into a contract over the threshold value cannot be delegated; and
- f) the power to waive a fee for service (wholly or partly) can only be delegated to the Chief Executive Officer if the waiver will provide a community benefit and subject to Section 289(4) of the Act; and
- g) the power to enter into a transaction on conditions that are not arm's length conditions can only be delegated to the Chief Executive Officer if the transaction will provide a community benefit.

Delegations – Policy 089		Page 1 of 4
Version: 3	Decision Number: ORD371/21	Adoption Date: 27/07/2021
Responsible Officer: Chief Executive Officer		Next Review Date: 28/02/2022



3.2 COUNCIL RESOLUTION

Within six (6) months of the commencement of the term of Council and in accordance with Section 40 of the Act a formal delegations are made by the Council of Council's powers, functions and duties, subject to compliance with any and all legislative requirements and Council policies and procedures and any conditions or limitations specified in the delegation.

Those delegations are subject to review and change from time to time and such powers and functions may be further delegated (sub-delegated) by the Chief Executive Officer in accordance with Section 168 of the Act as the Chief Executive Officer determines, unless otherwise resolved by Council.

The Chief Executive Officer must not delegate a power or function to:

- a) An audit committee;
- b) A council committee;
- c) A local authority; or
- d) A local government subsidiary

The form of delegation made by Council to the Chief Executive Officer is as set out below however reference should be made to the most recent resolution of Council and Council's Register of Delegations and Sub-Delegations.

Local Government Act 2019	<p>All of the powers, functions and duties of the Council under the <i>Local Government Act 2019</i> with the exception of the following:</p> <ol style="list-style-type: none"> i. The powers, functions and duties under Sections 35, regarding the adoption of the Municipal Plan. ii. The powers, functions and duties in Section 64, appointment to fill a Casual Vacancy on the Council. iii. The powers, functions and duties under Section 82 to establish or abolish Council Committees; and iv. The powers, functions and duties under Section Part 6.4, meetings of electors.
Darwin City Council By- laws 1994	The powers and functions under the Darwin City Council By-Laws 1994, subject to any legislative restrictions, conditions and limitation.
Other Acts, Regulations	All of the powers, functions and duties of other Acts and Regulations under which Council has a vested power, function or duty, subject to any legislative restrictions, conditions and limitation.

Separately, Council may be resolution, delegate a power, function or duty in relation to a matter.

Delegations – Policy 089		Page 2 of 4
Version: 3	Decision Number: ORD371/21	Adoption Date: 27/07/2021
Responsible Officer: Chief Executive Officer		Next Review Date: 28/02/2022



3.3 GENERAL DELEGATION AND SUB-DELEGATION PRINCIPLES

3.3.1 Delegations and sub-delegations

- a) Are to be worded so that they are exercisable by either a body or the holder of a position, not by a specified individual;
- b) Cannot go beyond what could be done by the person or body providing the delegation; and;
- c) Must be in writing and may be expressed to be subject to conditions or limitations which must be adhered to by the person exercising the delegated function.

A person or body delegating a function to another person or body may, at any time:

- a) Exercise the delegated function; or
- b) In writing, revoke, or vary, the delegation.

The power the sub-delegate in accordance with Section 168 of the Local Government Act cannot be sub-delegated.

A person or body exercising a delegated function does so in their own right, not as agent (or on behalf of) the person or body delegating the function.

A delegation cannot be exercised by a person who has a conflict of interest. If any conflict of interest occurs, this must be declared and dealt with in accordance with the Code of Conduct or any law or written policy that applies.

3.4 EXECUTION OF DOCUMENTS PURSUANT TO DELEGATED AUTHORITY

A person who enters into a deed, contract, agreement or similar document pursuant to a delegated authority must do so in accordance with all policies, procedures, conditions and limitations including those set out in the Register of Delegations and Sub-Delegations and Procedure - Common Seal and Delegated Authority Execution and any other condition or limitation imposed on the delegate.

4 DEFINITIONS

Sub-delegation means the passing of a delegation, with or without exclusion, from the Chief Executive Officer to another individual or body.

5 LEGISLATIVE REFERENCES

Local Government Act 2019

Local Government (General) Regulations 2021

Interpretation Act 1978

Darwin City Council By-Laws 1994

6 PROCEDURES AND RELATED DOCUMENTS

Register of Delegations and Sub-Delegations

Common Seal and Delegated Authority Execution Procedure

Delegations – Policy 089		Page 3 of 4
Version: 3	Decision Number: ORD371/21	Adoption Date: 27/07/2021
Responsible Officer: Chief Executive Officer		Next Review Date: 28/02/2022



7 RESPONSIBILITY AND APPLICATION

The Chief Executive Officer must maintain a Register of Delegations and Sub-delegations of all Council and Chief Executive Officer delegations and sub-delegations made.

This Policy should be evaluated on the basis that the extent of delegation and sub-delegation are improving the efficiency of the administrative processes by the devolution of authority and accountability to appropriate staff and/or other bodies to enable the proper discharge of their responsibilities and to ensure that internal controls are effective.

This Policy is to be reviewed every four (4) years within the Term of the Council and may be reviewed at other times at the discretion of Chief Executive Officer.

Delegations – Policy 089		Page 4 of 4
Version: 3	Decision Number: ORD371/21	Adoption Date: 27/07/2021
Responsible Officer: Chief Executive Officer		Next Review Date: 28/02/2022

