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|  | <h1>District Council of Cleve</h1> | Version No: | 4.0 |
| | | Issued: | January 2023 |
| | | Next Review: | January 2026 |

Policy Name: **Mayor Seeking Legal Advice**

1. INTRODUCTION

As a general rule, any legal advice obtained on behalf of a council will occur through the Chief Executive Officer or be authorised by the Chief Executive Officer or a council resolution. The Chief Executive Officer of a council is responsible for the implementation of lawful council decisions and for the overall administration and budget management of the 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 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.

3. 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, 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 Chief Executive Officer is unavailable**

While the Chief Executive Officer and Manager Corporate Services 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 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;
- 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 Chief Executive Officer (unless this is not appropriate – see below).

3.2 **The 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 (e.g. urgent employment related issues or where the Council is investigating a failure by the Chief Executive Officer to comply with a resolution of Council or where a matter relates to the exercise of a Chief Executive Officer's powers) 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:

- 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 Chief Executive Officer's employment or other personal matter;
- The Mayor may confer with other relevant senior Council staff, such as the Manager Corporate Services, 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;
- 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/Chairperson's decision to obtain the advice.

4. RECORD KEEPING AND CONFIDENTIAL DOCUMENTS

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.

Council uses the SynergySoft Records Management Module (electronic) as its corporate records management system. This system has the capability to store records under different security levels so that they may only be accessed by specified staff. 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*.

5. COUNCIL ENDORSEMENT

This Policy was adopted by resolution of the Council on 17 January 2023.

6. REVIEW AND EVALUATION

This Policy is scheduled for review by Council in January 2026.

7. AVAILABILITY OF POLICY

This policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.cleve.sa.gov.au. Hard copies of the policy can be obtained upon request and payment of the relevant fee as per Council's schedule of fees and charges.