

Delegations and Delegated Authority

Narration Script

Huon Valley Council | Candidate and Councillor Knowledge Series

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Slide 1 — Title — Delegations and Delegated Authority

Welcome to Delegations and Delegated Authority, part of the Huon Valley Council Candidate and Councillor Knowledge Series.

Most decisions Council makes are never made at a Council meeting. They are made by employees, under written authority, in Council's name and with the same legal effect.

This module covers how that works, what Council can and cannot hand over, and where a councillor can look to find out who decides what.

Slide 2 — Before You Begin

Delegation is the machinery that lets a council function, and understanding it answers the question councillors ask most often in their first year.

That question is: why was this decision not brought to Council? Almost always the answer is that it was made under a delegation Council itself granted, and that the decision was never Council's to make.

Delegation is written, and it is public. Every delegation must be in writing, recorded in a register kept by the Chief Executive Officer, and available for public inspection.

It runs far wider than the Local Government Act. Council holds functions under a great many Acts, and a few of them contain their own delegation power with its own rules.

And Council keeps what it delegates. Delegating a power does not give it away — Council may still exercise it and may revoke the delegation. We will come back to that, because it is the point most often misunderstood.

One note on titles before we start. The Local Government Act uses the term general manager throughout, including in the delegation provisions. Huon Valley Council calls that position the Chief

Executive Officer, and this module uses that title from here on. They are the same office and the same person.

Slide 3 — Why Council Delegates

Council's Governance and Meeting Procedures Framework is effectively its delegations policy, and it puts the reasoning plainly.

Start with the scale. Council derives functions and powers from the Local Government Act and a large number of other Acts and regulations. It is not practical or efficient that the Council as a whole acts as decision maker on all of them. A council that decided every matter itself would meet continuously and still fall behind.

So the legislation provides for it, allowing Council to delegate to the Chief Executive Officer, to committees, or to other specified officers.

It is a policy choice rather than an administrative accident. Delegations are part of Council's decision-making approach, and represent the policy of Council to entrust certain types of decisions to others. All delegations should sit in the context of Council policy that guides the delegated officer.

The stated rationale has five elements: improving responsiveness and customer service, streamlining administration, improving efficiency and productivity, ensuring legislative compliance, and allowing Council at a meeting to concentrate specifically on policy and strategic matters.

That last one is the reason that matters most to a councillor. Every routine decision delegated away is time returned to the things only Council can do.

Slide 4 — Three Routes

Authority travels in three directions, and each has its own rules.

Council delegates. Under section 22, a council may delegate in writing, with or without conditions, to the Chief Executive Officer, a controlling authority, a council committee or a special committee, any of its functions or powers under the Local Government Act or any other Act.

The Chief Executive Officer delegates. Under section 64, the Chief Executive Officer may delegate in writing to an employee any functions or powers under any Act, and also anything Council delegated and authorised them to delegate onward.

Neither can delegate the power to delegate. Council cannot delegate its own power of delegation unless it expressly authorises that, and the Chief Executive Officer can never delegate theirs at all.

Other Acts have their own delegation powers, with different limits and different processes. The next slides come back to that.

Which is why the instruments look different. A Council delegation is signed by the Mayor for and on behalf of Council and made under the common seal, recording the resolution number that authorised it. A delegation by the Chief Executive Officer is signed by the Chief Executive Officer alone.

Slide 5 — What Council Cannot Delegate

Section 22(3) puts nine things beyond delegation altogether, and they are worth knowing as a set, because between them they define what a council actually is.

Money. Council must not delegate the borrowing of money or other financial accommodation, the revision of its budget or financial estimates, or the making of rates and charges. Those three are why the finance modules keep returning to Council decisions by absolute majority.

Direction. Council must not delegate the revision of the strategic plan and the annual plan. Structure: it must not delegate the establishment of council committees, special committees, controlling authorities, single authorities or joint authorities.

People and land. Council must not delegate the appointment of the Chief Executive Officer — which is why the Performance Review Committee holds a delegation to monitor performance but never to appoint or dismiss. And it must not delegate the sale, donation, exchange or other disposal of land or public land.

And law-making. Council must not delegate the making of by-laws. Alongside those sit the determination of councillor expense categories, decisions under section 21(1), and any other prescribed power.

If a councillor ever wonders whether something should have come to Council, this list is the first place to check.

Slide 6 — What Needs a Policy First

Section 22(2) deals with five powers differently again. They can be delegated, but only narrowly, and only once Council has set the rules.

The five are the collection of rates and charges, the postponement of rates and charges, the remission or rebate of rates and charges, the writing off of any debts owed to Council, and the making of grants or provision of benefits.

There are only two possible recipients — the Chief Executive Officer or a council committee. Not a special committee, and not a controlling authority.

And only with policy in place. The delegation may be made only on condition that Council has determined appropriate policies and procedures to be followed in relation to those powers.

Which is exactly why those policies exist. The Rates and Charges Policy and the Financial Hardship and Payment Assistance Policy are not administrative tidiness — they are the statutory precondition for the delegations operating under them. Without them, those delegations could not lawfully be made.

The pattern is deliberate and worth carrying into other areas. Council may hand over the decision, but only after it has decided the principles on which that decision will be made.

Slide 7 — Delegation Under Other Acts

The volume of delegated decision-making sits outside the Local Government Act.

Council holds over forty-five separate instruments of delegation, across more than twenty-five Acts, regulations and by-laws — Dog Control, Food, Public Health, Emergency Management, environmental management, Heavy Vehicle National Law, Land Titles, Strata Titles, Monetary Penalties Enforcement, Urban Drainage, Right to Information, Public Interest Disclosures, Burial and Cremation, and Council's own By-law among them. Delegations for these are made under the general delegation power of the Local Government Act 1993.

A few Acts set their own terms for delegations.

Planning. Under section 6 of the Land Use Planning and Approvals Act, a planning authority may by resolution delegate any of its functions or powers other than the power of delegation, to a person employed by the authority. That is the delegation determining which development applications are decided by officers and which come to Council as a planning authority.

Building. Under section 8 of the Building Act, a council may delegate any of its powers and functions to any person, other than the power of delegation. Its powers and functions as a permit authority are treated separately, and may be delegated only to a person who is appropriately licensed to perform them. So the permit authority function does not sit with whoever Council chooses — it sits with someone qualified to hold it.

Highways. Section 124 of the Local Government Highways Act requires a special resolution passed by a majority of at least two-thirds of the councillors present. That is a higher bar than anything in the Local Government Act, and a councillor voting on one should know why the threshold differs.

The lesson is simple. Never assume the Local Government Act rules apply to a delegation under another Act.

Slide 8 — The Conditions of Delegation

Every delegation carries four standing conditions, and the last one matters most.

First, each delegation is subject to the conditions or limitations, if any, set against it in the table to the instrument. So the general and the specific conditions work together.

Second, each delegation is subject to such policies, policy guidelines and directions as the Council may from time to time approve. That is the link back to the policy module — a delegate exercises the power within Council's policy, and Council can change that policy.

Third, each delegation is subject to Council's By-laws and the provisions of any Act.

And fourth, each delegation is subject to the delegate having obtained and taken into account the advice of a qualified person, in the same manner as if the Council or a Council committee were making the decision, as required by section 65. The instrument adds that the delegate may rely on their own advice where they have the qualifications or experience to do so.

One structural point is worth knowing alongside those. Delegations are given to a person holding an office or position, never to a named individual, and they extend to a person acting in that capacity. That is what allows the organisation to keep working when someone is on leave or a role changes hands.

And here is the point of the whole set. A delegate does not get an easier standard than Council. They must decide within Council's policy, within the law, and on qualified advice — exactly as Council would have to if the matter had come to the table.

Slide 9 — Limits and Conditions

Delegations are rarely open-ended. The conditions and limitations column is where Council draws the line, and there are three kinds of line.

Financial limits. The delegation to write off bad debts is limited to amounts not exceeding five hundred dollars, and expressly excludes rates and charges levied under the Act. The same limit applies to the remission of fees and charges.

Scope limits. A delegation may be limited to particular Parts, Divisions or clauses rather than a whole instrument — the same way authorised officers under the By-law are appointed for the whole document or for limited parts.

Purpose limits. The delegation to the Chief Executive Officer's Performance Review Committee is limited to monitoring performance, and does not extend to appointment or dismissal.

And beyond the limit, it comes back. An application exceeding a delegated limit, or an applicant not satisfied with the outcome, is taken to Council. That is how the hardship policy works in practice.

Which keeps the safety valve open. Delegation moves the routine out of the chamber. It does not remove Council from the exceptional, and was never meant to.

Slide 10 — Council Keeps the Power

This is the point most often misunderstood, by councillors and by the community.

Delegation is not transfer. The provisions say it directly: notwithstanding any delegation, the delegating body may continue to perform or exercise all or any of the functions or powers delegated. And a delegation may be revoked, wholly or in part, by the body that made it.

But while it stands, the delegate's decision is Council's decision. A function or power exercised by a delegate has the same effect as if exercised by the Council itself. It is not a recommendation and it is not provisional.

So it cannot simply be overturned. A decision properly made under delegation is a valid decision of Council. Council disagreeing with it afterwards does not undo it, and a councillor promising a resident that Council will reverse a delegated decision is promising something Council may not be able to deliver.

Which gives the practical rule. If Council wants a class of decision back, it changes the delegation. It does not revisit the individual decision. That is a resolution to amend the instrument, not a debate about one property.

Slide 11 — The Register

Every delegation is recorded, and the record is public.

There are two registers and one obligation. The Chief Executive Officer keeps a register of any delegation made by Council under section 22, and a register of any delegation they have made under section 64. Both must be available for inspection at a public office of the council.

And Council publishes its delegations register on its website alongside its other statutory registers, instrument by instrument. So anyone — a councillor, a ratepayer, an applicant — can look up who holds authority for a particular decision, and see the conditions attached to it.

The register is reviewed regularly. The Framework provides that delegations will generally be reviewed at least once every year, and in response to any changes to, or the introduction of new, legislation Council administers. That review comes to Council, because Council delegations are Council's to make.

Which makes the register usable rather than ceremonial. When a councillor is unsure who can decide something, the register is the answer — and it is the same answer the community can find, which is worth remembering before telling a resident anything different.

Slide 12 — Five Things to Remember

Five things to take away.

One. Most decisions Council makes are delegated, and that is by design. It exists so that Council at a meeting can concentrate specifically on policy and strategic matters.

Two. Nine things never can be delegated: borrowing, making rates and charges, revising the budget, revising the strategic and annual plans, establishing committees and authorities, appointing the Chief Executive Officer, disposing of land, making by-laws, and determining councillor expense categories.

Three. Five powers need a policy first. Rates collection, postponement, remission or rebate, writing off debts, and grants or benefits delegable only to the Chief Executive Officer or a council committee, and only where Council has determined the policies and procedures to be followed.

Four. Council keeps the power it delegates and can revoke the delegation. But while it stands, a decision properly made under delegation has the same effect as a decision of Council, and it stands.

Five. It is all written down and public. Every delegation is in an instrument, recorded in a register, available for inspection at the public office, and published on Council's website.