



'COUNCIL' DEFINITION EXPLANATION

The following is a legal explanation of what constitutes the term Council and how that term is used in policy, decision-making and operational terms to undertake the required functions of Flinders Council.

1. A 'council' is a legal entity established by statute, specifically, s.18 of the *Local Government Act 1993 (Act)*.
2. Councils are body corporates, possess their own 'legal' identity, can sue and be sued, can buy and sell property, etc (see s.19 of the Act).
3. The council consists of its elected members (see s.25(1) of the Act) and they are the ones who exercise the powers granted to councils under various pieces of legislation. Elected members are akin the directors on the board of a company, but they are constrained by the terms of the Act.
4. The council, acting through the elected members, makes decisions which are then implemented by council's staff.
5. The council, acting through the elected members, can delegate a wide variety of its decision-making powers to other persons, most notably the General Manager. S.23AA of the *Acts Interpretation Act 1931* provides that "*A delegated function or power that is duly exercised by a delegate is to be taken to have been exercised by the delegator.*" The effect of this provision is that where the General Manager (i.e. the delegate) makes a decision under delegation from the council, the decision is taken to have been made by council (i.e. the delegator).
6. The General Manager has their own powers granted directly by statute. Those powers can also be delegated, usually to other council staff.
7. The term 'council' is often used in a general sense to refer to the 'legal entity, the elected members and all staff collectively. There are times when the term has a more specific meaning, e.g. when a council is entering into a contract for service, the reference will be to council as a legal entity acting in accordance with the decision of the elected members.

Bill Boehm
General Manager

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