



Delegated Committee Policy

Purpose

Under the *Local Government Act 2020* (the Act) Council may form Delegated Committees, which are defined as a committee exercising any power of a Council under the Act. This policy supports Baw Baw Shire Council in ensuring good governance and appropriate management of Delegated Committees. It outlines how Delegated Committees can be formed and how such committees are to be governed and run.

This policy ensures that the management of Delegated Committees is in accordance with the Act and meets the Act's principles of:

- Ensuring Council decisions and actions are taken in accordance with the relevant law;
- Achieving the best outcomes for the municipal community;
- Engaging the municipal community in strategic planning and strategic decision making; and
- Ensuring public transparency.

Definitions

For the purposes of this policy, Council adopts the following definitions:

The Act means the Local Government Act 2020. Where reference is made to the Local Government Act 1989, this will be specified.

Committee Meeting means a meeting of a Delegated Committee.

Community means groups of connected people. It is used to describe people of a municipality generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality. More specifically, it can refer to everyone affiliated with the municipality, or smaller groups defined by interest, identity or location, and not necessarily homogenous in composition or views.

Council means Baw Baw Shire Council.

Councillor means a current elected Councillor of Council.

Delegate means a member of Council staff to whom powers, functions and duties have been Delegated by an instrument of delegation.

Delegated Committee means a Delegated Committee established under section 63 of the Act.

Delegated Committee Meeting means a Meeting of a Delegated Committee.

Delegate Committee Report means a formal report produced by a Delegated Committee.

Governance Rules means the policy outlining the procedures of Council Meetings, which also apply to Delegated Committees (developed in accordance with Section 60 of the Act).

Quorum means the absolute majority of members present at the meeting and must include at least two Councillors; a Quorum is required to hold a formal meeting of Council.

Scope

This policy applies to all members of Delegated Committees and Councillors while remaining members of a delegated committee. The policy is relevant to all staff and community members who may interact from time to time with a Delegated Committee.

Legislative context

This policy relates to the Local Government Act 2020 (the Act) and results directly from amendments incorporated when the Act received Royal Assent on 24 March 2020.

The following Acts also have relevance to this policy:

- *Charter of Human Rights and Responsibilities Act 2006,*
- *Freedom of Information Act 1982,*
- *Local Government Act 1989,*
- *Local Government Act 2020, and*
- *Equal Opportunity Act 2010.*

Related policies and documents

Council's:

- Governance Rules,
- Information Privacy Policy,
- Complaints Handling Policy,
- Customer Service Charter,
- Public Transparency Policy, and
- Community Engagement Policy (when adopted).

Policy Detail

Formation of a Delegated Committee

Under the Act, the formation of, appointment to, and administration of Delegated Committees is highly controlled given their ability to exercise statutory functions and powers on behalf of the council.

Delegated Committees must be formed by Council Resolution, and the instrument of delegation conferring powers to that Delegated Committee must also be executed by Council Resolution.

Powers of a Delegated Committee

Section 11 of the Act allows a Council, by instrument of delegation, to delegate certain powers to a Delegated Committee. In effect, a Delegated Committee may exercise a power or undertake a duty or function as if it is the Council. Therefore, a resolution of a Delegated Committee holds the same weight as a resolution of Council (provided it falls within the committees delegated powers).

Section 11 of the Act identifies the limitations of powers that can be conferred to a Delegated Committee. The instrument of delegation made to the Delegated Committee will set the conditions and limitations of the committees' power. A delegation that includes the power to enter into a contract or make any expenditure must specify a maximum monetary limit that cannot be exceeded.

Delegations can only be made to legal entities, therefore instruments of delegation must be made to "the members of" a committee, not to the committee itself. It is not necessary to name the members or remake the instrument of delegation every time membership changes.

A member of a Delegated Committee to whom a delegation is made can only exercise the delegation while acting as a member of the Delegated Committee at a formal meeting of the Delegated Committee.

Council must review, within the period of 12 months after a general election, all delegations which have been made under the Act and are still in force.

Delegated Committee Governance

Delegated Committees are subject to the same Governance Rules as Council (developed in accordance with Section 60 of the Act.) The Governance Rules are an essential component to this policy.

Membership

Section 63 of the Act states that a Delegated Committee established by Council must include at least two Councillors.

Any other community member may become a member of a Delegated Committee if appointed by Council, and any such member will have the same entitlement to vote as a Councillor.

Delegated Committee members must adhere to the same standards of conduct as the Council.

Delegated Committee Meetings

Section 63 of the Act states that a Delegated Committee established by Council must be chaired by a Mayor or Councillor.

Section 61 of the Act applies to Delegated Committee Members as if they were Councillors, these provisions are outlined below:

- A quorum at a Delegated Committee Meeting is an absolute majority;
- Each member present at a Council meeting who is entitled to vote is entitled to one vote;
- Voting at a meeting must not be in secret, but if the meeting is closed to the public, a member is not required to divulge their vote to the public;
- If an item at a meeting is determined in the affirmative by a majority of the members present at a meeting at the time the vote is taken, the vote is considered in favour;
- Unless the vote relates to the Election of a Chair, or to declare the seat of Chair vacant, if the number of votes in favour of the question is half the number of Councillors present at the meeting at the time the vote is taken, the Chair has a second vote; and
- For the purpose of determining the result of a vote, a member present at the meeting who does not vote is to be taken to have voted against the motion.

The aforementioned Governance Rules are also an essential reference for the management of Delegated Committee Meetings, as Delegated Committees must adhere fully to these Rules, as if they were the Council.

Conflict of Interest

Any member who has a conflict of interest in their role as a member of the Delegated Committee must:

- Disclose the conflict of interest in the manner required by the Council's Governance Rules; and
- Exclude themselves from the decision-making process in relation to that matter, including any discussion or vote on the matter and any action in relation to the matter.

The disclosure of a Conflict of Interest at Delegated Committee Meetings, as outlined in the Governance Rules, is included below:

A member of a Delegated Committee who has a conflict of interest in a matter being considered at a Delegated Committee Meeting at which they:

- Are present must disclose that conflict of interest by explaining the nature of the conflict of interest to those present at the Delegated Committee Meeting immediately before the matter is considered; or
- Intend to present must disclose that conflict of interest by providing to the Chief Executive Officer before the Delegated Committee Meeting commences a written notice:
 - advising of the conflict of interest;
 - explaining the nature of the conflict of interest; and
 - detailing, if the nature of the conflict of interest involves a member of a Delegated Committee's relationship with or a gift from another person the name of the other person; and the nature of the relationship with that other person or the date of receipt, value and type of gift received from the other person; and
 - nature of that other person's interest in the matter,
 - then immediately before the matter is considered at the meeting announcing to those present that they have a conflict of interest and that a written notice has been given to the Chief Executive Officer under this sub-Rule.

The member of a Delegated Committee must, in either event, leave the Delegated Committee Meeting immediately after giving the explanation or making the announcement (as the case may be) and not return to the meeting until after the matter has been disposed of.

Failure to meet these requirements can result in penalties for the member.

Joint Delegated Committees

Under Section 64 of the Act, Council may form Joint Delegated Committees. A joint Delegated Committee is formed by resolution of two or more councils and consists of a Delegated Committee from each Council, including at least one Councillor from each Council present at

the meeting. This is not, in effect, a different committee as it is established by joining existing Delegated Committees.

Current Delegated Committees

At present, Council does not have any established Delegated Committees, and the establishment of such committees would require a resolution of Council and be subject to feedback from the municipal community.

Public Transparency

Delegated Committees have specific roles and powers by delegation, and therefore must meet the requirements of the Act in ensuring public transparency in their operations and declaring interests. Delegated Committee members are subject to many of the same requirements as councillors, such as the disclosure of conflicts of interest, and personal interest returns.

A Council must keep a public register of delegations made to Delegated Committees under Section 11 of the Act.

Monitoring and Review

Council is committed to monitoring the overall level of success of the policy's implementation.

A periodic review of this policy will be undertaken to ensure its relevance aligns with public interest. As a minimum, a review will occur in line with a new Council Term.

However, a Council can amend its policy at any time. The formation of any future Delegated Committees will require a decision of Council; therefore, it is likely that this policy would be reviewed and adopted by Council at this time.

Approval date	
Approval authority	Council
Effective from	1 September 2020
Review term	Council term
Next review date	1 November 2024
Responsible position	Manager Governance
Responsible Director	Corporate and Community Services
Version	1