



W A V E R L E Y
COUNCIL

COUNCIL MEETING

URGENT BUSINESS

7.00 PM, TUESDAY 17 MARCH 2020

Waverley Council
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URGENT BUSINESS

10. Urgent Business

CM/10.1/20.03 General Manager's Delegations.....3

REPORT
CM/10.1/20.03

Subject: General Manager's Delegations

TRIM No: SF20/29

Author: Jane Worthy, Internal Ombudsman

Director: Ross McLeod, General Manager

RECOMMENDATION:

That:

1. Council notes the potential impacts on business continuity for Council from the current Novel Coronavirus (COVID-19) pandemic.
2. Council resolves that it wishes to provide greater day-to-day decision-making authority to the General Manager while the pandemic affects the community and Council's operations.
3. Council delegates/sub-delegates to the General Manager the functions in accordance with the Instrument of Delegation to the General Manager attached to this report.
4. Emily Scott be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council.
5. Should Emily Scott be unable or unwilling to act as General Manager at any time, Peter Monks be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council.
6. Should Emily Scott and Peter Monks be unable or unwilling to act as General Manager at any time, John Clark be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council.
7. Should Emily Scott, Peter Monks and John Clark be unable or unwilling to act as General Manager at any time, Darren Smith be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council.
8. Any person acting as General Manager pursuant to this resolution has all the functions, delegations and sub-delegations given to the General Manager by the Council.
9. Council reviews the General Manager's delegations at the December 2020 Council meeting or earlier if circumstances require.
10. Council authorises the General Manager to approve purchases with fewer than the required number of quotes called for in the Purchasing Procedure up to \$250,000, until December 2020 when a review

of this will be included in the report to Council on the General Manager's delegations.

11. The General Manager reports to Councillors monthly by email on tenders accepted under delegation and any exemptions approved under clause 8 above.
12. Council authorises the Mayor and Deputy Mayor to affix the Council Seal to the Instrument of Delegation to the General Manager.

1. Executive Summary

In light of the most recent advice related to the COVID-19 pandemic including the principles of social distancing, Councils and LGNSW have raised concerns with the Local Government Minister, Shelley Hancock, about the discrepancy between this advice and the current prohibition on Councils meeting via video conference.

We will advise Council further about the outcome of these discussions, but until then Council is required to continue to meet in person.

Councils are, however, being encouraged to review their delegations to the General Manager to make sure as much as possible is delegated to the General Manager so as to minimise the need for face-to-face meetings of the Council and to ensure business continuity.

At Waverley, Council has delegated to the General Manager all of the delegable functions, with a limitation on the tender delegations. This report is to seek Council's approval to increase the level of authority given to the General Manager to accept tenders during the pandemic. It also recommended that Council reviews its previous decision to limit the authority of the General Manager to approve exemptions to the requirements of the Purchasing Procedure.

2. Introduction/Background

The General Manager's current Instrument of Delegation, which was approved at the Council meeting on 10 October 2019, allows the General Manager to accept tenders where the proposed contract is not for services currently being undertaken by Council staff for contracts with a total contract value (including GST) of up to:

- \$2.5 million during the Council end of year recess (i.e. from the day following the last Council meeting of the calendar year until the first Operations and Community Services Committee meeting of the following year).
- \$500,000 for the rest of the year.

Councillors will recall that recent changes to the Act changed the tender threshold from \$150,000 to \$250,000, except where the services are currently being undertaken by staff where the threshold remains at \$150,000. This means that, in most cases, Council is not required to call tenders for the letting of works or services contracts with an estimated value of less than \$250,000. Councillors will also recall that, until further changes are made to the *Local Government (General) Regulation 2005*, Council can only delegate the 'acceptance' of tenders. Where it is proposed to cancel a tender or negotiate the contract, this cannot be delegated.

Removing the tender limitations currently included in Schedule A, Part A of the Instrument will allow the General Manager to accept all tenders, except those affecting staff. It is recommended that the General Manager does not sub-delegate this function, and a limitation has been included in the attached Instrument to reflect this condition.

At the April 2019 Council meeting, Council resolved to limit the General Manager’s authority to approve exemptions to Council’s Purchasing Procedure where the required number of quotes are not received to purchases under \$50,000. When Council reviewed the General Manager’s delegations in October 2019, the report to Council noted that this decision was causing some inefficiencies in our procurement practices and that this would be reviewed as part of the procurement review to be undertaken.

Although this review is not yet complete, the current circumstances caused by COVID-19 suggest that Council’s reconsideration of this limitation would be prudent for the duration of the pandemic.

3. Relevant Council Resolutions

Meeting and date	Minute No.	Decision
Council 10 October 2019	CM/7.11/19.10	<p>That:</p> <ol style="list-style-type: none"> 1. Council delegates/sub-delegates to the General Manager the Functions in accordance with the Instrument of Delegation to the General Manager attached to this report at Attachment 1. 2. Emily Scott be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council. 3. Should Emily Scott be unable or unwilling to act as General Manager at any time, Peter Monks be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council. 4. Should Emily Scott and Peter Monks be unable or unwilling to act as General Manager at any time, John Clark be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council. 5. Should Emily Scott, Peter Monks and John Clark be unable or unwilling to act as General Manager at any time, Darren Smith be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave or business, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council. 6. Any person acting as General Manager pursuant to this resolution has all the functions, delegations and sub-delegations given to the General Manager by the Council. 7. Authorises the Mayor and Deputy Mayor to affix the Council Seal to the Instrument of Delegation to the

		General Manager.
Council 16 April 2019	CM/7.4/19.04	<p>That:</p> <ol style="list-style-type: none"> 1. Council delegates/sub-delegates to the General Manager the Functions in accordance with the Instrument of Delegation to the General Manager attached to this report at Attachment 1, subject to Policy Authorisation 14A Finance being limited to purchases under \$50,000. 2. Peter Monks be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council. 3. Should Peter Monks be unable or unwilling to act as General Manager at any time, Emily Scott be appointed to act as General Manager if the General Manager is sick or otherwise absent from work on leave, with such appointment to cease upon the return to work of the General Manager or by other resolution of the Council. 4. Any person acting as General Manager pursuant to this resolution has all the functions, delegations and sub-delegations given to the General Manager by the Council. 5. Authorises the Mayor and Deputy Mayor to affix the Council Seal to the Instrument of Delegation to the General Manager. 6. The delegations be reviewed in six months' time.

4. Discussion

It is therefore recommended that Council authorises the General Manager to accept tenders except those affecting staff. Given Council is still reviewing its procurement practices, it is recommended that this function remains with the General Manager only and is not sub-delegated.

It is further recommended that Council authorises the General Manager to approve exemptions to the required number of quotations under the Purchasing Procedure up to the tender threshold of \$250,000.

It is recommended that the General Manager’s delegations be reviewed at the December Council meeting, or earlier if circumstances make it necessary.

In order for Councillors to monitor the execution of these changes, the General Manager will provide a monthly report by email to all Councillors outlining tenders accepted and exemptions authorised during the month.

5. Financial impact statement/Time frame/Consultation

There will be no financial impact of this decision, and hopefully it will assist Council to continue normal day-to-day operations. Councillors will continue to be made aware of tenders being accepted and exemptions being granted. The Instrument of Delegation to the General Manager will take effect as soon as it is adopted by Council, and will be reviewed at the December Council meeting unless circumstances require an earlier review.

No consultation is necessary.

6. Conclusion

This report recommends that Council:

- As an interim measure, amends the delegation to the General Manager to authorise the General Manager to accept all tenders not affecting staff, with the limitation that this function is not to be sub-delegated.
- Re-appoints Emily Scott, Peter Monks, John Clark and Darren Smith as acting General Manager when the General Manager is on leave or unable to undertake his duties as per the previous delegation.
- Adopts the updated Instrument of Delegation to the General Manager and authorises the Mayor and Deputy Mayor to execute the Instrument under Council Seal.
- As an interim measure, increases the General Managers ability to approve purchases that do not comply with the required number of quotes under the Purchasing Procedure from \$50,000 to the tender threshold of \$250,000

7. Attachments

1. Instrument of Delegation to the General Manager - Ross McLeod - March 2020 [↓](#)

Waverley Council

Instrument of Delegation to

General Manager



On Tuesday, 17 March 2020 the Waverley Council (“Council”) resolved that:

1. All previous delegations of Functions the subject of this Instrument be revoked.
2. The person who from time to time holds the position of General Manager of Council (“General Manager”), being at the date of this instrument Ross McLeod, be delegated authority under section 377 of the LG Act, to exercise and/or perform on behalf of Council the Council’s Functions under all Legislation in force and as amended from time to time:
 - a. **Subject to** any condition or limitation on a Function specified in Schedule 1; and
 - b. **Excluding** those Functions:
 - i. that are expressly prohibited from delegation as listed under Section 377 of the LG Act;
 - ii. which are expressly required by legislation to be exercised by a resolution of the Council.
3. The General Manager be sub-delegated authority to exercise and/or perform on behalf of Council the Functions delegated to the Council under, and in accordance with, the instrument of delegation to the Council set out in **Schedule 2, excluding** those Functions which pursuant to the terms of the delegation to the Council may not be sub-delegated.
4. The General Manager be delegated any Function which is taken to be conferred or imposed on the Council pursuant to section 381(1) of the LG Act.
5. In the absence of the General Manager that a person/persons appointed to act as General Manager by resolution CM/10.1/20.03 made on 17 March 2020 assume all Functions, delegations, and sub-delegations of the General Manager for the period only of the absence of the General Manager unless otherwise resolved by the Council.
6. These delegations and authorities are subject to, and are to be exercised in accordance with:
 - a. the requirements of the relevant Legislation;
 - b. any conditions or limitations set out in **Schedule 1**; and
 - c. any resolution or policy, procedure or budget adopted from time to time by the Council.
7. These delegations and authorities are effective from the date of the Resolution of the Council and remain in force until amended or revoked by a resolution of the Council.
8. In this delegation:
 - “**Functions**” means powers, authorities, duties and functions and anything ancillary or related to the exercise or performance thereof.
 - “**Legislation**” means legislation enacted by the parliament of New South Wales and the parliament of the Commonwealth of Australia, including an Act, regulation made under an Act, by-law, rule or ordinance.
 - “**LG Act**” means the *Local Government Act 1993* as amended.

Schedule 1: Limitations

Part A – Limitations applicable to specific statutory Function (if any)	
<i>Environmental Planning and Assessment Act 1979</i>	All functions delegated to the Waverley Local Planning Panel (WLPP) under Local Planning Panels Direction – Development Applications dated 23 February 2018 and Local Planning Panels Direction – Planning Proposals dated 27 September 2018 and any subsequent Direction.
<i>Local Government Act 1993, s377(1)(i)</i>	This function cannot be sub-delegated by the General Manager.
Part B – General Limitations	
N/A	

Schedule 2: Instruments of Delegation to Council

Delegator	Instrument Name	Date Of Instrument
Roads & Maritime Services	Regulation of Traffic	Tuesday, 1 November 2011
Roads & Maritime Services	Regulation of Traffic	Tuesday, 1 November 2011
Roads & Maritime Services	Regulation of Traffic	Tuesday, 1 November 2011
NSW Food Authority	Instrument of appointment of a Category B enforcement agency	Tuesday, 1 July 2008
Minister for Heritage	Authorisation for Local Councils to make Interim Heritage Orders	Monday, 22 April 2013

Pursuant to a Resolution of the Council at its meeting of 17 March 2020

Councillor Masselos

Mayor

Date:

Review date: 8 December 2020

Councillor Keenan

Deputy Mayor

Date:

General Manager's acknowledgement of Delegations of Authority

I Ross Barry McLeod, currently employed by the Council in the position of General Manager, do hereby acknowledge that I have read and understood this Instrument of Delegation and that I will perform these delegations and authorities in accordance with this Instrument of Delegation and my position description.

Ross McLeod

General Manager of Waverley Council

Date: