



EXTRAORDINARY COUNCIL MEETING

A meeting of WAVERLEY COUNCIL will be held at Waverley Council Chambers,
Cnr Paul Street and Bondi Road, Bondi Junction at:

6.30 PM, TUESDAY 1 JUNE 2021

A handwritten signature in black ink, appearing to read 'Emily Scott', is positioned above the printed name.

Emily Scott
Acting General Manager

Waverley Council
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Live Streaming of Meetings

This meeting is streamed live via the internet and an audio-visual recording of the meeting will be publicly available on Council's website.

By attending this meeting, you consent to your image and/or voice being live streamed and publicly available.

AGENDA

PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The General Manager will read the following Opening Prayer:

God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.

The Mayor will read the following Acknowledgement of Indigenous Heritage:

Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.

1. **Apologies/Leaves of Absence**
2. **Declarations of Pecuniary and Non-Pecuniary Interests**
3. **Addresses to Council by Members of the Public**
4. **Reports**

CM/4.1/21.06E General Manager's Delegations.....4

5. **Meeting Closure**

REPORT
CM/4.1/21.06E

Subject: General Manager's Delegations

TRIM No: SF21/9

Author: Evan Hutchings, Executive Manager, Governance and Risk

Director: Karen Mobbs, General Counsel

RECOMMENDATION:

That:

1. Council delegates/sub-delegates to the General Manager the functions in accordance with the Instrument of Delegation to the General Manager attached to the report.
2. Council authorises the Mayor and Deputy Mayor to affix the Council Seal to the Instrument of Delegation to the General Manager.
3. John Clark be appointed to act as the 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 John Clark be unable or unwilling to act as General Manager at any time, Karen Mobbs be appointed to act as the 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. Any person acting as General Manager pursuant to this resolution has all the functions, delegations and sub-delegations given to the General Manager by Council.
6. The General Manager reports to Councillors monthly by email on tenders accepted under delegation and any procurement exemptions approved.

1. Executive Summary

At its meeting on 25 May 2021, Council resolved to offer the position of General Manager to Emily Scott. Following Ms Scott's written acceptance of the offer, an Extraordinary Meeting of Council is required to be held to formalise the Instrument of Delegation to become effective on Wednesday, 2 June 2021.

2. Introduction/Background

The *Local Government Act 1993* (the Act), and other legislation relevant to local government, authorises Council to undertake a range of functions. In most cases the relevant Acts grant those obligations and powers directly on the Council as a body.

Section 377 of the Act allows the elected Council to delegate, by Council resolution, authority to the General Manager to make most of the decisions and perform most of the functions required for Council to

operate on a day-to-day basis. The General Manager in turn sub-delegates all or some of these delegations to relevant Council officers as they relate to their role.

According to section 377, a council may, by resolution, delegate to the General Manager or any other person or body (not including another employee of the council) any of the functions of the council, other than:

- (a) The appointment of a general manager.
- (b) The making of a rate.
- (c) A determination under section 549 as to the levying of a rate.
- (d) The making of a charge.
- (e) The fixing of a fee.
- (f) The borrowing of money.
- (g) The voting of money for expenditure on its works, services or operations.
- (h) The compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment).
- (i) The acceptance of tenders to provide services currently provided by members of staff of the council.
- (j) The adoption of an operational plan under section 405.
- (k) The adoption of a financial statement included in an annual financial report.
- (l) A decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6.
- (m) The fixing of an amount or rate for the carrying out by the council of work on private land.
- (n) The decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work.
- (o) The review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*.
- (p) The power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194.
- (q) A decision under section 356 to contribute money or otherwise grant financial assistance to persons.
- (r) A decision under section 234 to grant leave of absence to the holder of a civic office.
- (s) The making of an application, or the giving of a notice, to the Governor or Minister.
- (t) This power of delegation.
- (u) Any function under this or any other Act that is expressly required to be exercised by resolution of the council.

In turn, section 378 of the Act allows the General Manager to sub-delegate some or all the functions and powers to relevant employees.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Council 25 May 2021	CM/11.1/21.05	<p>That:</p> <ol style="list-style-type: none"> 1. Council treats the mayoral minute as confidential in accordance with section 11(3) of the <i>Local Government Act 1993</i>, as it relates to a matter specified in section 10A(2)(a) and 10A(2)(d)(i) of the <i>Local Government Act 1993</i>. The mayoral minute contains personnel matters concerning particular individuals (other than Councillors) as well as commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.

		<ol style="list-style-type: none"> 2. Council receives and notes the report by the recruitment consultant, Stephen Blackadder, dated 17 May 2021 attached to the mayoral minute, on the recruitment and selection of a new General Manager. 3. The preferred candidate selected by the Panel after interviews conducted on 11 and 13 May 2021 be offered the position of General Manager effective Wednesday, 2 June 2021, and the Mayor and Deputy Mayor, in consultation with the recruitment consultant, be authorised to negotiate and finalise the appointment based on the following terms and conditions: <ol style="list-style-type: none"> (a) A five-year performance-based contract in accordance with the standard contract of employment as required by the Office of Local Government for General Managers in NSW. (b) A total remuneration package of \$370,000, being the total value of all components of remuneration offered, including salary, superannuation, the private use value of the Council- provided motor vehicle under a novated lease or leaseback arrangement and any other benefits negotiated with the successful candidate. (c) The policies of the Council that grant an entitlement to the employee relating to the private use of the Council motor vehicle and the incidental private use of the Council-provided mobile phone and laptop computer be included in Schedule A of the contract. 4. Following written acceptance of the offer from the preferred candidate, an Extraordinary Meeting of Council be held to formalise the Instrument of Delegation. 5. Council establishes a Committee made up of Councillors Masselos, Betts and Keenan to develop and negotiate a performance agreement with the General Manager within three months of appointment. 6. In view of the forthcoming local government elections in September 2021, a Performance Review Committee be appointed early in the next term of Council to undertake the General Manager's annual performance reviews. 7. No public announcement of the name of the successful candidate be made until such time as the Mayor has obtained a written acceptance of the offer from the preferred candidate. 8. Council maintains the confidentiality of the documents
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		and considerations in respect of the General Manager recruitment process.
Council 8 December 2020	CM/7.1/20.12	<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 the report. 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, 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. 4. Should Emily Scott 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. 5. Should Emily Scott, John Clark and Darren Smith be unable or unwilling to act as General Manager at any time, Karen Mobbs 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 Council. 7. The General Manager reports to Councillors monthly by email on tenders accepted under delegation and any exemptions approved. 8. Council authorises the Mayor and Deputy Mayor to affix the Council Seal to the Instrument of Delegation to the General Manager.

<p>Council 17 March 2020</p>	<p>CM/10.1/20.03</p>	<p>That:</p> <ol style="list-style-type: none"> 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 June 2020 and December 2020 Council meetings. 10. Council authorises the General Manager to approve
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		<p>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.</p> <p>11. The General Manager reports to Councillors monthly by email on tenders accepted under delegation and any exemptions approved under clause 10 above.</p> <p>12. Council authorises the Mayor and Deputy Mayor to affix the Council Seal to the Instrument of Delegation to the General Manager.</p>
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4. Discussion

The existing Instrument of Delegation to the General Manager was approved by Council at its meeting on 8 December 2020. It allowed the General Manager to continue 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.

The previous Instrument also allowed the General Manager to continue to approve exemptions up to the tender threshold of \$250,000. This authority is therefore included in Part B General Limitations of the proposed Instrument of Delegation attached to this report.

The above authorisations were originally approved by Council at its meeting on 17 March 2020 following encouragement from the Local Government Minister, Shelley Hancock MP, for councils to review their delegations to the General Manager so as to minimise the need for face-to-face meetings of Council, and to ensure business continuity during the COVID-19 pandemic.

In the context of COVID-19 impacts, and general process effectiveness terms, the current arrangements are working extremely well with a high degree of transparency. On that basis, this report recommends that Council keeps in place the current tender acceptance and procurement exemption delegation arrangements. These matters can again be included for consideration at the time of the next review.

5. Financial impact statement/Time frame/Consultation

There are no financial implications resulting from this report and the recommendations are intended to assist Council in continuing 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 on Wednesday, 2 June 2021, and will be reviewed as circumstances require and/or no later than 30 June 2022.

No consultation is necessary.

6. Conclusion

This report recommends that Council:

- Continues the authority for the General Manager to accept tenders not affecting staff, with the limitation that this function is not sub-delegated and the authority to approve purchase exemptions up to \$250,000 where the required three quotes have not been obtained.
- Appoints John Clark and Karen Mobbs to fill the role of Acting General Manager when the General Manager is unable to undertake her duties.
- Adopts the Instrument of Delegation to the General Manager and authorises the Mayor and Deputy Mayor to execute the Instrument under Council Seal.

7. Attachments

1. Draft Instrument of Delegation to General Manager - June 2021 [↓](#)

Waverley Council

Instrument of Delegation to

General Manager



On Tuesday, 1 June 2021, 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, be delegated authority under section 377 of the LG Act, to exercise and/or perform on behalf of Council, 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 Council.
3. The General Manager be sub-delegated authority to exercise and/or perform on behalf of Council the functions delegated to Council under, and in accordance with, the Instrument of Delegation to Council set out in **Schedule 2**, excluding those functions which pursuant to the terms of the delegation to Council may not be sub-delegated.
4. The General Manager be delegated any function which is taken to be conferred or imposed on 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 of Council on 1 July 2021 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 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 Council.
7. These delegations and authorities are effective from the date of the resolution of Council and remain in force until amended or revoked by a resolution of 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>	<p>Authority to accept tenders where the proposed contract is not for services currently provided by members of staff of the council.</p> <p>This function cannot be sub-delegated by the General Manager.</p> <p>The General Manager must report to Councillors on a monthly basis by email outlining all tenders accepted.</p>
Part B – General Limitations	
<i>Asset Disposal</i>	<p>Asset Disposal</p> <p>Authority to approve the disposal of assets up to the value of \$1,000,000 in accordance with Council's Asset Disposal Policy and Asset Disposal Procedure.</p> <p>Approval must not be given without consideration of a recommendation from the Director of the relevant business area.</p> <p>This authorisation does not apply to the disposal of real property, civil fixed assets and financial investments.</p>
<i>Debt Write Off</i>	<p>Debt write off</p> <p>Authority to write off debts up to the value of \$2500 (including GST) without a resolution of Council in accordance with clause 213(2) of the Local Government Regulation 2005 and Council resolution CM 7.5/17.07.</p>
<i>Rates and Charges Write Off</i>	<p>Rates and charges write off</p> <p>Authority to write off rates and charges up to the value of \$100 without a resolution of Council in accordance with clause 131(1) of the Local Government Regulation 2005 and Council resolution CM 7.6/17.07.</p>
<i>Procurement</i>	<p>Procurement Exemption</p> <p>Authority to approve purchases with fewer than the required quotes called for in the Purchasing Procedure up to \$250,000.</p> <p>The General Manager must report to Councillors on a monthly basis by email outlining all exemptions approved under this delegation.</p>

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 Council at its meeting of 1 June 2021.

Councillor Masselos

Mayor

Date:

Review date: June 2022

Councillor Keenan

Deputy Mayor

Date:

General Manager's acknowledgement of Delegations of Authority

I, Emily Scott, currently employed by 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.

Emily Scott

General Manager of Waverley Council

Date: