

# Delegations of Authority Part 1 From Council to the General Manager

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# 1. Preamble

A governing body of council may delegate certain functions to the general manager. A delegation of a council function must be made by a council resolution (Chapter 12 Part 3 ss 377-381 of the Act). A governing body of council cannot delegate the functions set out in section 377(1) of the Act.

A council's governing body may not delegate the adoption of a Code of Meeting Practice, a Code of Conduct, or the endorsement of Community Strategic Plans, Resourcing Strategies, Delivery Programs and Operational Plans.

This document outlines the delegations that Federation Council has delegated to the General Manager under Section 377 of the Local Government Act 1993 (Act). This section provides:

- (1) 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 under this or any other Act, other than the following:
  - (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 Division 8.2 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.

(1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if:

- (a) the financial assistance is part of a specified program, and
- (b) the program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and
- (c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and
- (d) the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.

(2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Departmental Chief Executive except as provided by the instrument of delegation to the council.

## 2. Purpose

To provide clear direction to the Council and General Manager in regard to the functions and powers of delegation authorised in accordance with the legislation.

## 3. Background

In accordance with section 377 of the Act, the Council by resolution at its meeting on **15 August 2022** delegated its powers, authorities, duties and functions as set out in this Delegations of Authority to the General Manager.

All Council delegations contained herein are subject to the following limitations:

1. The delegated power, authority, duty or function being performed in accordance with Council Policy;
2. The delegated power, authority, duty or function being performed in accordance with the Law;

The delegations of Council will remain in force until they are revoked or amended by a resolution of Council.

The Council notes that the General Manager may delegate his or her powers, authorities, duties and functions at his or her discretion. The General Manager's delegations to staff are within a separate document.

Despite most delegated functions and powers being able to be sub-delegated, from the General Manager to other staff, there remains some functions and powers that are required to be delegated directly from Council to the particular staff members. This occurs from time to time as required via specific Council resolutions.

## 4. Scope

This policy applies to the Council and the General Manager in the conduct of their duties.

## 5. Definitions

<b>Act</b>	means <i>Local Government Act 1993</i>
<b>Authority</b>	means any government (state or federal), government department, statutory corporation or other body having power to legally direct the Council or its officers
<b>Department</b>	means the Department of Local Government, or any future department (or combined department) carrying out the functions of the present Department of Local Government for the State of New South Wales
<b>Director-General</b>	means the Director-General of the Department of Local Government or the Director-General of any other government department which has the carriage of the administrative functions of the Act and the portfolio of Local Government
<b>General Manager</b>	Refers to a person appointed to the role of General Manager in either a permanent, acting or interim capacity
<b>Law</b>	means the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, environmental planning instruments, directions and consents of any Authority
<b>Minister</b>	means the Minister for Local Government or any future title given to a ministerial position of a future New South Wales State Government portfolio that includes governance of Local Government

## 6. Responsibilities

Specific responsibilities of key staff are outlined below.

<b>Councillors</b>	<ul style="list-style-type: none"><li>• Authorise any changes and reviews by resolution of Council</li></ul>
<b>General Manager</b>	<ul style="list-style-type: none"><li>• To read, understand and comply with delegations and any limitations as they apply to the General Manager</li></ul>
<b>Governance Officer</b>	<ul style="list-style-type: none"><li>• Coordinate review of Delegations as per legislative requirements</li></ul>

## 7. References & Associated Documents

Local Government Act 1993 s. 377, s378

*Guidelines under section 23A for the Appointment and oversight of General Managers – OLG July 2011*

Delegations from Council to Mayor Policy V2.0 – 18/35714

Delegations from General Manager to Staff Policy V7.0 –17/29338

## 8. Reviews

This policy will be reviewed at a minimum, within 12 months of new council as per S. 380 LGA. Council will review as required in line with any changes to legislation.

## 9. Schedule of Changes and Amendments

Version	Date	Changes / Amendments
1.0	19/5/2016	Policy developed for Federation Council
2.0	09/06/2017	Addition of amendments issued on 23/9/2016 as per Phase 1 amendments to <i>Local Government Act 1993 Circular No 16-35 and 17-06 (OLG)</i> acceptance of tenders and the implementation of the adopted Operational Plan
3.0	12/10/2017	Removal of reference to Administrator and inclusion of Mayor
4.0	21/08/2018	General review and update of policy, revise tender limit to \$250K for Council consideration from \$500K (Schedule 1 – Item 5)
5.0	21/04/2020	Old version Council to GM and Mayor in one policy document 16/21996[v4]. Council to GM and Mayor policy drafted for Federation Council by PDC Lawyers 11/9/18 Record number 18/35714. This draft policy has now been split into two policy documents. This (16/21996[v5]) is now the new Council to Mayor document and 18/35714 is the Council to GM document.
6.0	7/12/2021 Adopted 15/8/2022	Some minor reformatting and change to review period to include within 12 months of new council as per legislation. Remove expenditure delegation limitation relating to major plant and motor vehicles (reverting to general \$250,000 limitation). Limit delegation for certain Development Applications (DA) from related parties (Councillors, General Manager and Directors). Reduce limitation on the number of DA objections required prior to a DA requiring a decision of Council (from 1 to 10 objections).

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## Appendix A: Part 1 Delegations of Authority From Council to the General Manager

The General Manager, and in the absence of the General Manager their nominee as the Acting General Manager for the period of the General Manager's absence, is delegated authority under section 377 of the Act, to exercise and/or perform on behalf of Council the powers, authorities, duties and functions of the Council, subject to the following:

1. The General Manager is restrained from carrying out any of those functions of Council excluded from delegation by operation of section [377\(1\)](#) of the Act;
2. The General Manager is entitled to carry out any functions delegated to the Council by the Director-General or the Minister, subject to any express limitations imposed by the Director General or Minister.

If a function is conferred or imposed on an employee of Council under any other legislation, the function is deemed to be conferred or imposed on the Council and is delegated to the General Manager.

The General Manager is delegated any power, authority, duty and function which is taken to be conferred or imposed on the Council pursuant to section 381(1) of the Act.

This delegation and authority is subject to and is to be exercised in accordance with:

- the requirements of the relevant legislation;
- any conditions or limitations set out in Schedule 1; and
- any resolution or policy, procedure or budget adopted from time to time by the Council.

<b>SCHEDULE 1 – CONDITIONS AND LIMITATIONS</b>	
<b>1.01</b>	<b>Obtain Quotations and Authorise Purchase Orders</b>  The General Manager may obtain quotations, authorise the purchase of, and issue official orders for goods, works and services required for the functioning of the Council and to incur expenditure for such goods, works and services provided that due provision has been made in the approved budget for the incurring of such expenditure or the incurring of such expenditure is otherwise authorised by Council Policy or Council resolution.
<b>1.02</b>	<b>Debt Write Off</b>  The General Manager may authorise writing off uncollectible debts (for charges and sundry debtors) up to a maximum amount of five thousand dollars (\$5,000).
<b>1.03</b>	<b>Waiving of interest (under S567 of the Local Government Act 1993)</b>  <\$500 General Manager may delegate to staff the authority to waive interest up to \$500  <\$5,000 General Manager may waive interest up to \$5,000
<b>1.04</b>	<b>Approve Special Leave with pay and expenses</b>



## SCHEDULE 1 – CONDITIONS AND LIMITATIONS

	<p>The General Manager may grant special leave with pay and reasonable out of pocket expenses, in the following cases:</p> <ol style="list-style-type: none"> <li>a. Professional Body: where staff members are full members of a relevant professional body that is running a conference or meeting – a maximum of five days leave at any one time, with a maximum in any one year of 15 days;</li> <li>b. Field Days: where it is considered that the machinery to be displayed is of some relevance to Council’s operations, that Senior Staff directly associated with the purchase of Council’s machinery be allowed to attend one day only;</li> <li>c. Executive of a Professional Body: where an employee is elected to the Executive of a Professional body, special leave must fit within the parameters laid down under the Professional Body category;</li> <li>d. Courses: Attendance at refresher courses (eg. Management courses) to be decided by Council in each particular case.</li> </ol> <p>The General Manager may grant special leave with pay in accordance with the Local Government (COVID-19) Splinter (Interim) Award 2022.</p>
<p><b>1.05</b></p>	<p><b>Enter into Leases, Licences and other legal transactions</b></p> <p>The General Manager may negotiate and enter into any form of Lease or Licence or other transaction for use of land or assets, subject to compliance with the Act, subject to the General Manager making reasonable enquiries into the appropriate payments to be made to Council and consulting with Council’s solicitor to determine the appropriate format of the legal agreement.</p>
<p><b>1.06</b></p>	<p><b>Implementation of Adopted Operational Plan</b></p> <p>The General Manager may not implement any work, service or action provided for in the Adopted Operational Plan without further resolution by Council where:</p> <ol style="list-style-type: none"> <li>a. the work, service or action is currently provided by staff and/or</li> <li>b. the work, service or action is not currently provided by staff where they would be deemed by the Local Government Act 1993 to be a tender in excess of \$250,000 and/or</li> <li>c. the work, service or action includes capital expenditure on land purchases, land remediation, water supply networks, sewerage networks, stormwater drainage, domestic waste management facilities, roads, footpaths and bridges.</li> </ol> <p>Note: The Act currently allows Council to delegate to the General Manager the ability to approve tenders up to \$500,000, however for this Council, it is considered any amount of greater than \$250,000.</p>
<p><b>1.07</b></p>	<p><b>Determination of Reserve Price and Disposal of Plant, Equipment and Vehicles by Public Auction, Tender or Trade-in</b></p>

## SCHEDULE 1 – CONDITIONS AND LIMITATIONS

	<p>The General Manager has authority to approve a sale price for Council plant, equipment or vehicles only if:</p> <ol style="list-style-type: none"> <li>a. the best offer is greater than 90% of the reserve price; and</li> <li>b. the reserve price has been set by consulting either a valuer, auctioneer, or professional book (i.e. Red Book); and</li> <li>c. results from previous auctions for similar plant, equipment or vehicles has been considered.</li> </ol>
<b>1.08</b>	<p><b>Road Rules</b></p> <p>The General Manager may only administer the provisions of the Road Rules 2008 and Australian Road Rules as they apply to Council, subject to any applicable standards, protocols and directions from State Government departments and/or NSW Police.</p>
<b>1.09</b>	<p><b>Temporary Road Closure</b></p> <p>The General Manager may approve temporary road closures only where:</p> <ol style="list-style-type: none"> <li>a. The temporary road closure is not more than two consecutive days; and</li> <li>b. The Road and Maritime Service approves the Traffic Management Plan and grants a road occupancy licence (as required); and</li> <li>c. The NSW Police approve the closure.</li> </ol>
<b>1.10</b>	<p><b>Special Use Zones</b></p> <p>The General Manager has authority to approve and/or refuse an application for the following Special Use Zones:</p> <p>Works Zones; Loading Zones; Mail Zones; Motorcycle Parking; Bus Zone; Taxi Zone; Police Vehicles Zone; Disabled Parking; Temporary Bus Zones (eg. for Railway Buses); subject to consent being obtained from the NSW Police and in addition; in the instance of Mail Zones, consent is obtained from Australia Post; and in the instance of Bus Zones , consent is obtained from the State Transit Authority.</p>
<b>1.11</b>	<p><b>Traffic Facilities</b></p> <p>The General Manager may approve the installation of individual traffic facilities projects, only where:</p> <ol style="list-style-type: none"> <li>a. the individual traffic facility project forms part of that financial year’s Traffic Facilities Program which has previously been approved; and</li> <li>b. subject to consultation with local residents.</li> </ol>

## SCHEDULE 1 – CONDITIONS AND LIMITATIONS

<p><b>1.12</b></p>	<p><b>Warning Signs</b></p> <p>The General Manager may approve the installation of Warning Signs as defined in applicable Australian Standards, only where:</p> <ol style="list-style-type: none"> <li>a. the proposed sign can be found in Section 3 Warning Signs of the Australian Standard 1742.1-1991 and</li> <li>b. the NSW Police agree with the installation.</li> </ol>
<p><b>1.13</b></p>	<p><b>Signs across Driveways</b></p> <p>The General Manager may approve or refuse an application for signs or line marking across a driveway, only where the NSW Police agree with the approval or refusal.</p>
<p><b>1.14</b></p>	<p><b>Storm water Drainage Works</b></p> <p>The General Manager may approve or refuse all connections from private property to Council’s storm water systems only where those works are for the sole benefit of the development and do not revert to the control and management of the Council.</p>
<p><b>1.15</b></p>	<p><b>Grant Applications</b></p> <p>The General Manager is authorised to submit grant applications, or expressions of interest for grants, on behalf of Council, providing the project/program is within an approved Council service/function/asset and or relates to an approved action within Council’s Operational Plan or Delivery Program.</p> <p>Any funding proposed to be met by Council, as part of the application must be within Council’s adopted budget, or a separate Council resolution required prior to submitting the grant.</p>
<p><b>1.16</b></p>	<p><b>Development Applications</b></p> <p>Applications for proposed Development on Council owned or controlled land, for a capital investment value of between \$250,000 and \$5,000,000, regardless of if any objections are received or not, are to be referred to Council for determination.</p> <p>Applications for proposed Development on any land, whereby 10 or more objections have been received, is to be referred to Council for determination.</p> <p>Applications for proposed development where the General Manager or Directors have an affiliation or interest is referred to Council for determination unless it involves Complying Development as defined by the Act.</p> <p>Applications for proposed development where a Councillor has an affiliation or interest is to be referred to Council for determination, excluding the following:</p> <ul style="list-style-type: none"> <li>• Development of a commercial nature up to 500 square metres in area</li> <li>• Subdivisions no greater than 2 lots</li> <li>• Developments involving the construction of up to 2 dwellings.</li> <li>• Any development that is defined as Complying Development under the Act.</li> </ul>

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