

Delegations of Authority From Council to the Mayor

Record No: 18/35714[v2]

Adopted: 15 August 2022



Policy Type	COUNCIL
Policy Reference Number	Delegations of Authority From Council to the Mayor
Adopted by Council	15 August 2022
Council Resolution No	259/2022FC
Version Number	2.0
Responsible Director	Director Corporate and Community
Review schedule	Within 12 months of new council and every two years in line with Mayoral elections and where changes are required by legislation.
Next Review Date	December 2023 or earlier as required

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1. Preamble

This document outlines the role of Mayor, as per Section 226 of the NSW Local Government Act 1993 (Act), and also outlines functions delegated to the Mayor as per Section 377 of the NSW Local Government Act 1993.

Section 226 - Role of mayor

The role of the mayor is as follows—

- (a) To be the leader of the council and a leader in the local community,
- (b) To advance community cohesion and promote civic awareness,
- (c) To be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- (d) To exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,
- (e) To preside at meetings of the council,
- (f) To ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- (g) To ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- (h) To promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- (i) To promote partnerships between the council and key stakeholders,
- (j) To advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,
- (k) In conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- (l) To carry out the civic and ceremonial functions of the mayoral office,
- (m) To represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) In consultation with the councillors, to lead performance appraisals of the general manager,
- (o) To exercise any other functions of the council that the council determines.

Section 377 – Matters which cannot be delegated

Section 377 provides the matters, which **CANNOT** be delegated, to the Mayor, General Manager or any other body:

- (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 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.
- (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 the Mayor 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 Mayor.

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 Mayor may delegate his or her powers, authorities, duties and functions at his or her discretion to the Deputy Mayor, in the case of the absence of the Mayor.

4. Scope

This policy applies to the Mayor in the conduct of their duties.

6. Definitions

Act	Means <i>Local Government Act 1993</i>
Authority	Means any government (state or federal), government department, statutory corporation or other body having power to legally direct the Council or its officers
Department	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
Director-General	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
Mayor	Refers to a person appointed to the role of Mayor in either a permanent, acting or interim capacity
Law	Means the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, environmental planning instruments, directions and consents of any Authority
Minister	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

5. Responsibilities

Specific responsibilities of key staff are outlined below.

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

7. References & Associated Documents

Local Government Act 1993 s226, s377, s378

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

8. Schedule of Changes and Amendments

Version	Date	Changes / Amendments
1.0	21/4/2020	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 (18/35714) is now the new Council to Mayor document and 16/21996[v4] is the Council to GM document.
2.0	8/12/2021	Some minor reformatting and change to review period to include within 12 months of new council as per legislation. Update legislation references (LGGR)

9. Reviews

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

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Appendix A: Delegation to the Mayor

The Mayor, and in the absence of the Mayor, the Deputy Mayor for the period of the Mayor's absence, is delegated authority under section 377 of the Act to exercise and/or perform on behalf of the Council the following powers, authorities, duties and functions on an ongoing basis:

Delegations to the Mayor	
1.	<p>Leadership and policy direction</p> <p>a) To be the leader of the Council and a leader in the local community;</p> <p>b) To advise, consult and provide strategic direction to the General Manager, except as otherwise provided by the Act.</p>
2.	<p>Management of Council meetings and business</p> <p>a) To preside (Chair) at all meetings of the Council, Committees, Community Committees and Public Meetings convened by the Council at which the Mayor is present, unless the Council otherwise appoints another person to perform this function.</p> <p>b) To call and schedule meetings of Council and Council Committees, briefings of Councillors and inspections by Councillors;</p> <p>c) To request the General Manager to include items on the agendas for all meetings of Council and Council Committees, subject to the Act and the Local Government (General) Regulation 2021 and any other act or regulation. Provided that if the Council has by resolution determined that a specific item should be placed on its agenda, the function exercised under this delegation must be exercised in accordance with that resolution.</p>
3.	<p>Negotiations on behalf of Council</p> <p>In conjunction with the General Manager, to participate in negotiations on behalf of the Council with third parties and in connection with the sale, purchase and lease of land and buildings.</p> <p><u>Limitations:</u></p> <p>This function is subject to the limitation that no contractual agreement is to be entered into without a resolution of Council unless the contractual agreement is authorised by a separate delegation.</p>
4.	<p>Represent Council – Government and Other Forums/External relations and representations</p> <p>a) To act as the official spokesperson of the elected Council;</p> <p>b) To determine:</p> <p style="padding-left: 20px;">i. who should represent Council on external organisations and committees and inter-agency working parties, where Council has not determined a representative; and</p> <p style="padding-left: 20px;">ii. who should represent Council at civic ceremonial and social functions, where the Mayor is unable to attend and Council has not determined its representative,</p>

Delegations to the Mayor

Limitations:

This function is subject to the limitation that before a determination is made that a staff member should represent Council, the Mayor must consult with the General Manager.

- c) To represent the Council, in conjunction with the General Manager, in deputations to government, inquiries and other forums where it is appropriate that the Mayor should present the Council's position.

5. **Sign and Execute Documents**

To sign correspondence and other documents.

Limitations:

This function is subject to the limitation that execution of any documents under Council Seal must be carried out in compliance with Regulation 400 of the Local Government (General) Regulations 2021.

6. **Media Releases**

To make Media Statements and issue Press Releases in respect of Council Resolutions and decisions subject to prior consultation with the General Manager.

7. **Organisational Accountability and Performance Management**

a) Leave of General Manager

To approve applications of leave by the General Manager, and authorise timesheets.

b) General Manager Credit Card

To provide oversight and co-sign General Manager Credit Card statements with the Director Corporate and Community Services.

c) General Manager Contract

- i. To exercise Council's functions under the General Managers Contract of Employment having regard to any functions of a performance review panel or policy in effect;
- ii. To obtain external legal advice in relation to the appointment, conduct and performance of the General Manager, and related issues;
- iii. To negotiate and settle terms of a contract of employment with the General Manager including the appropriate remuneration, bonuses and incentives in accordance with relevant Council resolutions (as required), the General Manager's Contract of Employment and relevant Council policies;

Delegations to the Mayor

- iv. To review, approve and implement governance and accountability structures and processes for the performance of the General Manager, having regard to any functions of a performance review panel or policy in effect; and to oversee the performance of the General Manager, including to set performance standards, and a plan, and carry out performance reviews, of the General Manager, in accordance with any performance review panel or policy in effect;
- v. To accept the resignation of the General Manager;
- vi. To appoint a Director as an Acting General Manager from time to time as might be required by the absence of the General Manager any reason; if not already appointed by the General Manager or Council under the Act, and until such time as a Council meeting to endorse this appointment.
- vii. To take other administrative action in connection with the General Manager's Contract of Employment if required and subject to any resolutions of Council.

8. Financial Expenditure

To incur expenditure for goods and services for Council to a limit of \$1000 (GST inclusive).

9 Delegations

This Instrument of Delegation should be construed as:

- a) Operating in a manner which is valid and within the powers conferred on Council under the Act;
- b) Not limiting the Mayor's ability to carry out such other functions and exercise such other powers as the Council may determine from time, to time or as may be functions of the Lord Mayor under the Act.
- c) All previous delegations of functions the subject of this Instrument of Delegation are revoked.