

Instrument of Delegation to the Chief Executive Officer

Dated 22 February 2022



- A. This Instrument of Delegation recognises that certain functions are conferred on the Chief Executive Officer under section 335 of the Local Government Act 1993 (Act), including the day-to-day management of Council.
- B. Pursuant and subject to section 377 of the Act, Council delegates to the person holding the position of Chief Executive Officer from time to time Council's Functions under the Act and all other acts and regulations in force and as amended from time to time conferring Functions on Council subject to any conditions or limitations in Schedule 1.
- C. The Chief Executive Officer is authorised to act as a Council nominated director on Newcastle Airport Pty Ltd, Greater Newcastle Aerotropolis Pty Ltd, Newcastle Airport Partnership, Greater Newcastle Aerotropolis Partnership, Newcastle Airport Partnership Company 1 and Newcastle Airport Partnership Company 2.

SCHEDULE 1: LIMITATION OF FUNCTIONS DELEGATED TO THE CHIEF EXECUTIVE OFFICER

GENERAL

1. the functions which are required by or under the Act or by or under any other act or instrument to be exercised by the governing body of the Council, this includes but is not limited to the functions listed in section 377 (1) of the Act;
2. functions and authorities delegated to the Lord Mayor;

POLICY AND PROCEDURE

3. the power to make or amend Council Policy;
4. the release for public exhibition and comment of any plan or policy, which is required by legislation to be exhibited;
5. the exercise of functions in a manner not consistent with the policies and decisions of Council, or reasonable and lawful direction of the Lord Mayor;

BUDGET AND RESOURCE ALLOCATION

6. approving Council's budget;
7. the setting of priorities for Major Projects;
8. variation to Major Projects (projects exceeding \$5m) exceeding an amount of 10% above the approved project budget;
9. the approval of the final design in relation to any new capital works item and any other capital works item specified by Council in the budget approval process where the budget exceeds \$5m;

10. the awarding of contracts for any tender called pursuant to section 55 (1) of the Act where the value is greater than \$1m. This financial limitation only applies to tenders called by City of Newcastle. It does not apply to the awarding of contracts by third party entities that Council has formed or participated in forming;
11. writing off bad debts or waiving fees and charges, for amounts above \$10,000 (including GST);

ORGANISATIONAL STRUCTURE AND PERSONNEL MATTERS

12. the approval of the organisation structure at Director level, except for transitional or temporary arrangements;
13. the appointment of Senior Staff Contract positions unless prior consultation with Council has occurred, (the CEO may make transitional or temporary arrangements);
14. entering into a new enterprise agreement except after consultation with Council;

COUNCIL OPERATIONS AND SERVICES

15. carrying out new non-core services not already approved by Council;
16. variation of any existing Council service that would have overall negative implications for Council in terms of cost or service delivery, except
 - a) in the event of an emergency, or an order by legislation or government authority, including in relation to the COVID-19 Pandemic, and variation of service is required in order to comply, after consultation the Lord Mayor and Council where reasonably possible.
17. setting or altering the Schedule of Fees and Charges, except in accordance with the relevant categories as determined within the Council's Operational Plan;

LEGAL PROCEEDINGS

18. the giving of instructions to Council's legal representatives to commence legal proceedings in the NSW Supreme or Federal Courts, except in relation to an urgent injunction proceedings and after consultation with the Lord Mayor where practical and possible (provided that the status of all NSW Supreme and Federal Court proceedings will be reported to Council);
19. the giving of instructions in legal proceedings contrary to a resolution of Council except in planning or regulatory appeals where instructions can be given to resolve an appeal;

PROPERTY, LAND USE AND RELATED MATTERS

20. granting of approvals to occupy and use public land (as defined in the Act), crown land or any other land managed by Council except approvals:
 - i. with a maximum rental or fee not exceeding \$150,000 per annum and a term (all leases with a term exceeding 5 years entered into under delegated authority by the Chief Executive Office (or delegate) will be reported to the elected Council on a quarterly basis);

- ii. relating to a temporary use of public land (as defined in the Act) or crown land (including parks and open spaces) not exceeding forty consecutive days; or
- iii. with such approvals being reported to Council in the Quarterly Report.

21. adoption of a plan of management for community land;

CULTURAL

22. the development or formation of relationships with other cities, including sister city agreements;

23. the approval of civic and ceremonial events;

24. the granting of civic honours;

PLANNING AND DEVELOPMENT

25. determination of applications for development consent under the Environmental Planning and Assessment Act 1979 (Development Application) that are to be referred to the Development Applications Committee.

Limitation 25 does not apply during a Recess Period where the Instrument of Delegation to the Development Applications Committee is placed on hold, in which case the determination of all Development Applications is delegated jointly to the Lord Mayor and Chief Executive Officer (except those limited by relevant legislation) provided:

- i. such delegation is exercised following receipt by the Lord Mayor and Chief Executive Officer of reports or other business papers in a form similar to the form of reports or other business papers normally submitted to Council or a Committee of Council;
- ii. those reports or other business papers are to be circulated to Councillors at least three business days prior to the exercise of delegations;
- iii. where written objections by three Councillors on any one item are received by the Lord Mayor or Chief Executive Officer, stating relevant reasons for objection, the item is to be deferred until the next relevant Development Applications Committee meeting; and
- iv. any such decisions made by the Lord Mayor and Chief Executive Officer pursuant to such delegation is to be reported to the next meeting of Council.

SCHEDULE 2: ADDITIONAL FUNCTIONS DELEGATED TO THE CHIEF EXECUTIVE OFFICER

COUNCIL OPERATIONS

1. The temporary suspension of Alcohol Free Zones (AFZ) pursuant to the Suspension or Cancellation of an AFZ provision of Section 645 of the Local Government Act 1993 to facilitate the approval of licensed events not exceeding 5 days in length.¹

¹Refer to Council resolution "Adoption of the Alcohol Regulated Areas Review" dated 22/02/2022.

This Instrument of Delegation:

- a) Recognises that the Chief Executive Officer may be delegated any function which is taken to be conferred or imposed on Council pursuant to section 381 of the Act.
- b) Is subject to, and is to be exercised in accordance with, the requirements of the relevant legislation and any resolution of Council.
- c) Is not intended to limit the Chief Executive Officer'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 Chief Executive Officer under the Act.
- d) Should be construed as operating in a manner which is valid and within the powers conferred on the Council under the Act.

INTERPRETATION

- a) **Chief Executive Officer** means the General Manager appointed under the Act.
- b) **Decisions of Council** means resolutions made by the elected Council from time to time.
- c) **Policy/Policies of Council** means policies adopted by the elected Council from time to time.
- d) **Recess Period** means a period of time where Council has by resolution of Council specifically determines a break in Council's ordinary meeting schedule. A Recess Period does not include:
 - (i) The time between meetings (an extraordinary meeting can be called where decisions are required to be made as a matter of urgency).
 - (ii) The time between Council terms (that is the period between the day of the last ordinary Council meeting and the date of declaration of a new elected Council).

All previous delegations of functions the subject of this Instrument are revoked.